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AMENDED IN ASSEMBLY APRIL 16, 2015
AMENDED IN ASSEMBLY APRIL 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1517

Introduced by Committee on Banking and Finance (Assembly Members Dababneh (Chair), Travis Allen (Vice Chair), Achadjian, Brown, Chau, Gatto, Kim, Low, Perea, Ridley-Thomas, and Mark Stone)

March 10, 2015

An act to amend Section 17511.1 of the Business and Professions Code, to amend Sections 1632.5, 1748.13, 1789.12, 1812.201, and 2923.3 of the Civil Code, to amend Sections 1101.1, 2207, 2510, 3100, 17713.12, 25003, 25018, 25100, 25207, 25243.5, 25247, 25254, 25401, 25604, 25607, 25612.5, 25614, 25702, 29542, 31408, 31503, and 31513 of the Corporations Code, to amend Sections 620, 622, 1070, 2105, 4057, 12104, 17210.2, 17214, 17311, 17320, 17331, 18405, 22105.1, 22159.5, 22160, 22756, 23070, 23071, 23072, 23073, 23074, 23102, 30217, 50140, 50303, 50307.1, and 50316.5 of, to amend the heading of Article 4 (commencing with Section 670) of Chapter 7 of Division 1 of, and to repeal Section 1008 of, the Financial Code, to amend Sections 5970, 6254.5, 6254.12, 6254.22, 11840, 53344.1, 53638, and 54956.87 of the Government Code, to amend Sections 1280.7, 12693.35, 14053, and 15036 of the Insurance Code, to amend Section 4600.5 of the Labor Code, to amend Section 11604.5 of the Probate Code, to amend Section 408 of the Revenue and Taxation Code, and to amend Section 22005.1 of the Welfare and Institutions Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 1517, as amended, Committee on Banking and Finance. Business.

(1) Existing law abolished the Department of Corporations and the Department of Financial Institutions and transferred their responsibilities to the Department of Business Oversight, which is headed by a Commissioner of Business Oversight.

This bill would transfer additional duties from the abolished Department of Corporations and the abolished Department of Financial Institutions to the Department of Business Oversight and the Commissioner of Business Oversight, as specified, *as well as the Department of Managed Health Care*. This bill would also update cross-references and outdated contact information with respect to the Department of Business Oversight.

(2) Existing law, the Corporate Securities Law of 1968, makes it unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to employ a device, scheme, or artifice to defraud, make an untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, or engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

This bill would instead make it unlawful for any person to offer or sell a security in this state, or to buy or offer to buy a security in this state, by means of any written or oral communication that includes an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading.

Existing law, the Corporate Securities Law of 1968, requires the offer and sale of securities in the state to be qualified with the Commissioner of Business Oversight, unless exempt. That law exempts specific securities or transactions from qualification, including, among others, any security issued or guaranteed by a public utility holding company, as specified.

This bill would revise this exemption to exempt any security issued or guaranteed by a public utility holding company that is regulated in respect to its rates and charges by the United States or a state, and delete obsolete cross-references.

This bill would also update and delete obsolete cross-references to federal law in the Corporate Securities Law of 1968.

(3) Existing law limits the amount of funds of a bank or trust company that are deposited in any other financial institution, as specified, unless the financial institution has been designated as a depository for the funds of the depositing bank or trust company by a vote of the majority of the directors of the depositing bank or trust company and the financial institution has been approved by the commissioner as a depository for the purposes of these provisions.

This bill would repeal these provisions.

(4) Existing law, the Banking Law, prescribes the conditions pursuant to which a state-chartered bank may engage in the practice of banking. Existing law requires a bank to have authorization to open an office. Existing law defines core and noncore banking business and defines a facility, in this context, as an office in this state at which a bank engages in noncore banking business but not core banking business.

This bill would delete the phrase “in this state” from the definition of a facility, as described above.

(5) Existing law requires an industrial loan company to annually file with the Commissioner of Business Oversight an audit report containing audited financial statements and other relevant information the commissioner may require relating to the company. Existing law further requires an industrial loan company whose certificate has been surrendered or revoked to submit to the commissioner a closing audit report containing audited financial statements, as specified.

This bill would repeal the requirement for the closing audit report.

(6) *This bill would also make technical changes and corrections.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17511.1 of the Business and Professions
- 2 Code is amended to read:
- 3 17511.1. As used in this article, “telephonic seller” or “seller”
- 4 means a person who, on his or her own behalf or through
- 5 salespersons or through the use of an automatic dialing-announcing
- 6 device, as defined in Section 2871 of the Public Utilities Code,
- 7 causes a telephone solicitation or attempted telephone solicitation
- 8 to occur which meets the criteria specified in subdivision (a), (b),
- 9 (c), or (d) and who is not exempted by subdivision (e), as follows:

1 (a) A telephone solicitation or attempted telephone solicitation
2 wherein the telephonic seller initiates telephonic contact with a
3 prospective purchaser and represents or implies one or more of
4 the following:

5 (1) That a prospective purchaser who buys one or more items
6 will also receive additional or other items, whether or not of the
7 same type as purchased, without further cost. For purposes of this
8 subdivision, “further cost” does not include actual postage or
9 common carrier delivery charges, if any.

10 (2) That a prospective purchaser will receive a prize or gift, if
11 the person also encourages the prospective purchaser to do either
12 of the following:

13 (A) Purchase or rent any goods or services.

14 (B) Pay any money, including, but not limited to, a delivery or
15 handling charge.

16 (3) That a prospective purchaser is able to obtain any item or
17 service at a price which the seller states or implies is below the
18 regular price of the item or service offered. This paragraph shall
19 not apply to retailers who, within the previous 12 months, have
20 sold a majority of their goods or services through in-person sales
21 at retail stores.

22 (4) That a prospective purchaser who buys office equipment or
23 supplies will, because of some unusual event or imminent price
24 increase, be able to buy these items at prices which are below those
25 that are usually charged or will be charged for the items.

26 (5) That the seller is a person other than the person he or she is.

27 (6) That the items for sale are manufactured or supplied by a
28 person other than the actual manufacturer or supplier.

29 (7) That the seller is offering to sell the prospective purchaser
30 any gold, silver, or other metals, including coins, diamonds, rubies,
31 sapphires, or other stones, coal or other minerals, or any interest
32 in oil, gas, or mineral fields, wells, or exploration sites, or any
33 other investment opportunity of any type whatsoever.

34 (8) That the seller is offering to make a loan, or to arrange or
35 assist in arranging a loan or to assist in providing information
36 which may lead to the obtaining of a loan, unless no payment of
37 any kind is made until the loan proceeds are disbursed to the
38 borrower.

39 (9) That a prospective purchaser will receive a credit card, as
40 defined in subdivision (a) of Section 1747.02 of the Civil Code,

1 if the purchaser pays an ~~up-front~~ *upfront* or preapplication fee for
2 the credit card to the telephonic seller.

3 (b) A solicitation or attempted solicitation which is made by
4 telephone in response to inquiries generated by unrequested
5 notifications sent by the seller to persons who have not previously
6 purchased goods or services from the seller or who have not
7 previously requested credit from the seller, to a prospective
8 purchaser wherein the seller represents or implies to the recipient
9 of the notification that any of the following applies to the recipient:

10 (1) That the recipient has in any manner been specially selected
11 to receive the notification or the offer contained in the notification.

12 (2) That the recipient will receive a prize or gift if the recipient
13 calls the seller.

14 (3) That if the recipient buys one or more items from the seller,
15 the recipient will also receive additional or other items, whether
16 or not of the same type as purchased, without further cost or at a
17 cost which the seller states or implies is less than the regular price
18 of such items.

19 However, this subdivision does not apply to the solicitation of
20 sales by a catalog seller who periodically issues and delivers
21 catalogs to potential purchasers by mail or by other means. This
22 exception only applies if the catalog includes a written description
23 or illustration and the sales price of each item of merchandise
24 offered for sale, includes at least 24 full pages of written material
25 or illustrations, is distributed in more than one state, and has an
26 annual circulation of not less than 250,000 customers.

27 (c) A solicitation or attempted solicitation which is made by
28 telephone in response to inquiries generated by advertisements on
29 behalf of the telephonic seller wherein it is represented or implied
30 that the seller is offering to sell to the prospective purchaser any
31 gold, silver, or other metals, including coins, diamonds, rubies,
32 sapphires, or other stones, coal or other minerals, or any interest
33 in oil, gas, or mineral fields, wells, or exploration sites, or any
34 other investment opportunity of any type whatsoever.

35 (d) A solicitation or attempted solicitation which is made by
36 telephone in response to inquiries generated by advertisements on
37 behalf of the telephonic seller wherein it is represented or implied
38 that the seller is offering to make a loan or to arrange or assist in
39 arranging a loan or to assist in providing information which may

1 lead to the obtaining of a loan, unless no payment of any kind is
2 made until the loan proceeds are disbursed to the borrower.

3 (e) For purposes of this article, “telephonic seller” or “seller”
4 does not include any of the following:

5 (1) A person offering or selling a security qualified under
6 Section 25110, 25120, or 25130 of the Corporations Code or
7 exempt from qualification under Chapter 1 (commencing with
8 Section 25100) of Part 2 of Division 1 of Title 4 of the
9 Corporations Code. The fact that a notice claiming an exemption
10 under the Corporate Securities Law of 1968 is filed with the
11 Department of Business Oversight does not create an exemption
12 under this paragraph.

13 (2) A person licensed pursuant to Part 1 (commencing with
14 Section 10000) of Division 4, when the solicited transaction is
15 governed by that law.

16 (3) A person licensed pursuant to Chapter 9 (commencing with
17 Section 7000) of Division 3, when the solicited transaction is
18 governed by that law.

19 (4) A person licensed or certificated pursuant to Part 2
20 (commencing with Section 680) of Division 1 of the Insurance
21 Code, including a person licensed pursuant to Chapter 5
22 (commencing with Section 1621) thereof, when the solicited
23 transaction is governed by that law.

24 (5) A person offering or selling a franchise registered pursuant
25 to Section 31110 of the Corporations Code or exempt from
26 registration under Chapter 1 (commencing with Section 31100)
27 of Part 2 of Division 5 of Title 4 of the Corporations Code. The
28 fact that a notice claiming an exemption under the Franchise
29 Investment Law is filed with the Department of Business Oversight
30 does not create an exemption under this paragraph.

31 (6) A person soliciting the sale of a seller assisted marketing
32 plan, as defined in Title 2.7 (commencing with Section 1812.200)
33 of Part 4 of Division 3 of the Civil Code, who has filed with the
34 Attorney General the documents required by Section 1812.203 of
35 the Civil Code.

36 (7) A person primarily soliciting the sale of a newspaper of
37 general circulation, as defined in Article 1 (commencing with
38 Section 6000) of Chapter 1 of Division 7 of Title 1 of the
39 Government Code, a magazine, or membership in a book or record

1 club whose program operates in conformity with the requirements
2 of Section 1584.5 of the Civil Code.

3 (8) A person soliciting business from prospective purchasers
4 who have previously purchased from the business enterprise for
5 which the person is calling.

6 (9) A person soliciting without the intent to complete and who
7 does not complete the sales presentation during the telephone
8 solicitation but completes the sales presentation at a later
9 face-to-face meeting between the solicitor and the prospective
10 purchaser. However, if a seller, directly following a telephone
11 solicitation, causes an individual whose primary purpose it is to
12 go to the prospective purchaser to collect the payment or deliver
13 any item purchased, this exemption does not apply.

14 (10) Any supervised financial institution or parent, subsidiary,
15 or subsidiary of parent thereof. As used in this paragraph,
16 “supervised financial institution” means any commercial bank,
17 trust company, savings and loan association, credit union, industrial
18 loan company, ~~personal property broker, consumer finance lender,~~
19 ~~commercial finance lender,~~ *finance lender or broker*, or insurer,
20 provided that the institution is subject to supervision by an official
21 or agency of this state or of the United States.

22 (11) A person soliciting the sale of a preneed funeral
23 arrangement regulated by Article 9 (commencing with Section
24 7735) of Chapter 12 of Division 3.

25 (12) A person licensed pursuant to Chapter 19 (commencing
26 with Section 9600) of Division 3 when acting pursuant to that
27 licensure.

28 (13) A person soliciting the sale of services provided by a cable
29 television system licensed or franchised pursuant to Section 53066
30 of the Government Code or any other authority.

31 (14) A person or an affiliate of a person whose business is
32 regulated by the Public Utilities Commission.

33 (15) A person soliciting the sale of a commodity pursuant to
34 Part 2 (commencing with Section 58601) of Division 21 of the
35 Food and Agricultural Code, if the solicitation neither intends to,
36 nor actually results in, a sale which costs the purchaser in excess
37 of one hundred dollars (\$100).

38 (16) An issuer or subsidiary of an issuer that has a security listed
39 on a national securities exchange or designated as a national market
40 system security on an interdealer quotation system by the National

1 Association of Securities Dealers, Inc., if the exchange or
2 interdealer quotation system has been certified by rule or order of
3 the Commissioner of Corporations under subdivision (o) of Section
4 25100 of the Corporations Code. A subsidiary of an issuer that
5 qualifies for exemption under this paragraph is not itself exempt
6 unless not less than 60 percent of the voting power of its shares is
7 owned by the qualifying issuer or issuers.

8 (17) A person soliciting exclusively the sale of telephone
9 answering services to be provided by that person or that person's
10 employer.

11 (18) A person soliciting a transaction regulated by the
12 Commodity Futures Trading Commission if the person is registered
13 or temporarily licensed for this activity with the Commodity
14 Futures Trading Commission under the Commodity Exchange Act
15 (7 U.S.C. Sec. 1 et seq.), and the registration or license has not
16 expired or been suspended or revoked.

17 (19) A person who sells coins or bullion at a price which is not
18 more than 25 percent more than the price at which the seller is
19 concurrently buying the same coins or bullion, if: (A) the seller
20 has had a retail location in California from which he or she has
21 been selling coins or bullion to the public in person for at least
22 three years; (B) the telephonic solicitations are not the person's
23 primary business and sales made telephonically make up less than
24 20 percent of the person's total retail sales; and (C) the person
25 claiming an exemption pursuant to this subdivision complies with
26 Section 17511.3, as applicable, and subdivision (p) of Section
27 17511.4.

28 (20) A person licensed pursuant to ~~Chapter 14 (commencing~~
29 ~~with Section 1800) of Division 1.2 (commencing with Section~~
30 ~~2000) of the Financial Code to receive money for transmittal to~~
31 ~~foreign countries engage in the business of money transmission~~ if
32 the license has not expired or been suspended or revoked.

33 (21) A person licensed as a residential mortgage lender or
34 servicer pursuant to Division 20 (commencing with Section 50000)
35 of the Financial Code, when acting under the authority of that
36 license.

37 (22) A corporation that meets all of the following conditions:

38 (A) It has been exempt from taxation under Section 23701e of
39 the Revenue and Taxation Code for a minimum of 10 years.

1 (B) It has maintained its principal purpose for a minimum of
2 10 years.

3 (C) It has been incorporated in the state for a minimum of 25
4 years.

5 (f) In any civil proceeding alleging a violation of this article,
6 the burden of proving an exemption or an exception from a
7 definition is upon the person claiming it, and in any criminal
8 proceeding alleging a violation of this article, the burden of
9 producing evidence to support a defense based upon an exemption
10 or an exception from a definition is upon the person claiming it.

11 (g) Compliance with this article does not satisfy nor substitute
12 for any requirements for license, registration, or regulation
13 mandated by other laws.

14 SEC. 2. Section 1632.5 of the Civil Code is amended to read:

15 1632.5. (a) A supervised financial organization that negotiates
16 primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,
17 whether orally or in writing, in the course of entering into a contract
18 or agreement for a loan or extension of credit secured by residential
19 real property, shall deliver to the other party to that contract or
20 agreement prior to the execution of the contract or agreement the
21 form described in subdivision (i) for that language.

22 (b) For purposes of this section:

23 (1) "Contract" or "agreement" shall have the same meaning as
24 defined in subdivision (g) of Section 1632.

25 (2) "Supervised financial organization" means a bank, savings
26 association, as defined in Section 5102 of the Financial Code,
27 credit union, or holding company, affiliate, or subsidiary thereof,
28 or any person subject to Division 7 (commencing with Section
29 18000), Division 9 (commencing with Section 22000), or Division
30 20 (commencing with Section 50000) of the Financial Code.

31 (c) (1) With respect to a contract or agreement for a loan or
32 extension of credit secured by residential real property as described
33 in subdivision (a), a supervised financial organization that complies
34 with this section shall be deemed in compliance with Section 1632.

35 (2) A supervised financial organization that complies with
36 Section 1632, with respect to a contract or agreement for a loan
37 or extension of credit secured by residential real property as
38 described in subdivision (a), shall be deemed in compliance with
39 this section.

1 (d) The supervised financial organization shall provide the form
2 described in subdivision (i) to the borrower no later than three
3 business days after receipt of the written application, and if any
4 of the loan terms summarized materially change after provision
5 of the translated form but prior to consummation of the loan, the
6 supervised financial organization shall provide an updated version
7 of the translated form prior to consummation of the loan.

8 (e) (1) This section does not apply to a supervised financial
9 organization that negotiates primarily in a language other than
10 English, as described by subdivision (a), if the party with whom
11 the supervised financial organization is negotiating, negotiates the
12 terms of the contract through his or her own interpreter.

13 (2) For purposes of this subdivision, “his or her own interpreter”
14 means a person, not a minor, able to speak fluently and read with
15 full understanding both the English language and one of the
16 languages specified in subdivision (a) that is the language in which
17 the contract was negotiated, who is not employed by, and whose
18 services are not made available through, the person engaged in the
19 trade or business.

20 (f) Notwithstanding subdivision (a), a translated form may retain
21 any of the following elements of the executed English language
22 contract or agreement without translation:

23 (1) Names and titles of individuals and other persons.

24 (2) Addresses, brand names, trade names, trademarks, or
25 registered service marks.

26 (3) Full or abbreviated designations of the make and model of
27 goods or services.

28 (4) Alphanumeric codes.

29 (5) Individual words or expressions having no generally accepted
30 non-English translation.

31 (g) The terms of the contract or agreement which is executed
32 in the English language shall determine the rights and obligations
33 of the parties. However, the translation of the form described in
34 subdivision (i) and required by subdivision (a) shall be admissible
35 in evidence only to show that no contract or agreement was entered
36 into because of a substantial difference in the material terms and
37 conditions of the contract or agreement and the prior translated
38 form provided to the borrower.

39 (h) (1) A licensing agency may, by order, after appropriate
40 notice and opportunity for hearing, levy administrative penalties

1 against a supervised financial organization that violates any
2 provision of this section, and the supervised financial organization
3 may be liable for administrative penalties, up to the amounts of
4 two thousand five hundred dollars (\$2,500) for the first violation,
5 five thousand dollars (\$5,000) for the second violation, and ten
6 thousand dollars (\$10,000) for each subsequent violation. Except
7 for licensing agencies exempt from the provisions of the
8 Administrative Procedure Act, any hearing shall be held in
9 accordance with the Administrative Procedure Act (Chapter 5
10 (commencing with Section 11500) of Part 1 of Division 3 of Title
11 2 of the Government Code), and the licensing agency shall have
12 all the powers granted under that act.

13 (2) A licensing agency may exercise any and all authority and
14 powers available to it under any other provisions of law to
15 administer and enforce this section, including, but not limited to,
16 investigating and examining the licensed person's books and
17 records, and charging and collecting the reasonable costs for these
18 activities. The licensing agency shall not charge a licensed person
19 twice for the same service. Any civil, criminal, and administrative
20 authority and remedies available to the licensing agency pursuant
21 to its licensing law may be sought and employed in any
22 combination deemed advisable by the licensing agency to enforce
23 the provisions of this section.

24 (3) Any supervised financial organization that violates any
25 provision of this section shall be deemed to have violated its
26 licensing law.

27 (4) Nothing in this section shall be construed to impair or impede
28 the Attorney General from bringing an action to enforce this
29 division.

30 (i) The Department of Business Oversight shall create a form
31 to be made available in each of the languages set forth in
32 subdivision (a) for use by a supervised financial organization to
33 summarize the terms of a mortgage loan pursuant to subdivision
34 (a). In creating the form, the Department of Business Oversight
35 may use as guidance the United States Department of Housing and
36 Urban Development's Good Faith Estimate disclosure form.

37 (j) This section shall not apply to federally chartered banks,
38 credit unions, savings banks, or thrifts.

39 (k) Except as otherwise provided in subdivision (h), this section
40 shall not be construed to create or enhance any claim, right of

1 action, or civil liability that did not previously exist under state
2 law, or limit any claim, right of action, or civil liability that
3 otherwise exists under state law.

4 (l) An action against a supervised financial organization for a
5 violation of this section may only be brought by a licensing agency
6 or by the Attorney General.

7 (m) This section shall become operative beginning on July 1,
8 2010, or 90 days following the issuance of a form by the
9 Department of Business Oversight pursuant to subdivision (i),
10 whichever occurs later.

11 SEC. 3. Section 1748.13 of the Civil Code is amended to read:

12 1748.13. (a) A credit card issuer shall, with each billing
13 statement provided to a cardholder in this state, provide the
14 following on the front of the first page of the billing statement in
15 type no smaller than that required for any other required disclosure,
16 but in no case in less than 8-point capitalized type:

17 (1) A written statement in the following form: “Minimum
18 Payment Warning: Making only the minimum payment will
19 increase the interest you pay and the time it takes to repay your
20 balance.”

21 (2) Either of the following:

22 (A) A written statement in the form of and containing the
23 information described in clause (i) or (ii), as applicable, as follows:

24 (i) A written three-line statement, as follows:

25 “A one thousand dollar (\$1,000) balance will take 17 years and
26 three months to pay off at a total cost of two thousand five hundred
27 ninety dollars and thirty-five cents (\$2,590.35).

28 A two thousand five hundred dollar (\$2,500) balance will take 30
29 years and three months to pay off at a total cost of seven thousand
30 seven hundred thirty-three dollars and forty-nine cents (\$7,733.49).

31 A five thousand dollar (\$5,000) balance will take 40 years and two
32 months to pay off at a total cost of sixteen thousand three hundred
33 five dollars and thirty-four cents (\$16,305.34).

34 This information is based on an annual percentage rate of 17
35 percent and a minimum payment of 2 percent or ten dollars (\$10),
36 whichever is greater.”

37 In the alternative, a credit card issuer may provide this
38 information for the three specified amounts at the annual percentage
39 rate and required minimum payment which are applicable to the

1 cardholder's account. The statement provided shall be immediately
2 preceded by the statement required by paragraph (1).

3 (ii) Instead of the information required by clause (i), retail credit
4 card issuers shall provide a written three-line statement to read, as
5 follows:

6 "A two hundred fifty dollar (\$250) balance will take two years
7 and eight months to pay off a total cost of three hundred
8 twenty-five dollars and twenty-four cents (\$325.24).

9 A five hundred dollar (\$500) balance will take four years and five
10 months to pay off at a total cost of seven hundred nine dollars and
11 ninety cents (\$709.90).

12 A seven hundred fifty dollar (\$750) balance will take five years
13 and five months to pay off at a total cost of one thousand
14 ninety-four dollars and forty-nine cents (\$1,094.49).

15 This information is based on an annual percentage rate of 21
16 percent and a minimum payment of 5 percent or ten dollars (\$10),
17 whichever is greater."

18 In the alternative, a retail credit card issuer may provide this
19 information for the three specified amounts at the annual percentage
20 rate and required minimum payment which are applicable to the
21 cardholder's account. The statement provided shall be immediately
22 preceded by the statement required by paragraph (1). A retail credit
23 card issuer is not required to provide this statement if the
24 cardholder has a balance of less than five hundred dollars (\$500).

25 (B) A written statement providing individualized information
26 indicating an estimate of the number of years and months and the
27 approximate total cost to pay off the entire balance due on an
28 open-end credit card account if the cardholder were to pay only
29 the minimum amount due on the open-ended account based upon
30 the terms of the credit agreement. For purposes of this
31 subparagraph only, if the account is subject to a variable rate, the
32 creditor may make disclosures based on the rate for the entire
33 balance as of the date of the disclosure and indicate that the rate
34 may vary. In addition, the cardholder shall be provided with
35 referrals or, in the alternative, with the "800" telephone number
36 of the National Foundation for Credit Counseling through which
37 the cardholder can be referred, to credit counseling services in, or
38 closest to, the cardholder's county of residence. The credit
39 counseling service shall be in good standing with the National
40 Foundation for Credit Counseling or accredited by the Council on

1 Accreditation for Children and Family Services. The creditor is
2 required to provide, or continue to provide, the information
3 required by this paragraph only if the cardholder has not paid more
4 than the minimum payment for six consecutive months, after July
5 1, 2002.

6 (3) (A) A written statement in the following form: “For an
7 estimate of the time it would take to repay your balance, making
8 only minimum payments, and the total amount of those payments,
9 call this toll-free telephone number: (Insert toll-free telephone
10 number).” This statement shall be provided immediately following
11 the statement required by subparagraph (A) of paragraph (2). A
12 credit card issuer is not required to provide this statement if the
13 disclosure required by subparagraph (B) of paragraph (2) has been
14 provided.

15 (B) The toll-free telephone number shall be available between
16 the hours of 8 a.m. and 9 p.m., Pacific standard time, seven days
17 a week, and shall provide consumers with the opportunity to speak
18 with a person, rather than a recording, from whom the information
19 described in subparagraph (A) may be obtained.

20 (C) The Department of Business Oversight shall establish a
21 detailed table illustrating the approximate number of months that
22 it would take and the approximate total cost to repay an outstanding
23 balance if the consumer pays only the required minimum monthly
24 payments and if no other additional charges or fees are incurred
25 on the account, such as additional extension of credit, voluntary
26 credit insurance, late fees, or dishonored check fees by assuming
27 all of the following:

28 (i) A significant number of different annual percentage rates.

29 (ii) A significant number of different account balances, with
30 the difference between sequential examples of balances being no
31 greater than one hundred dollars (\$100).

32 (iii) A significant number of different minimum payment
33 amounts.

34 (iv) That only minimum monthly payments are made and no
35 additional charges or fees are incurred on the account, such as
36 additional extensions of credit, voluntary credit insurance, late
37 fees, or dishonored check fees.

38 (D) A creditor that receives a request for information described
39 in subparagraph (A) from a cardholder through the toll-free
40 telephone number disclosed under subparagraph (A), or who is

1 required to provide the information required by subparagraph (B)
2 of paragraph (2), may satisfy its obligation to disclose an estimate
3 of the time it would take and the approximate total cost to repay
4 the cardholder's balance by disclosing only the information set
5 forth in the table described in subparagraph (C). Including the full
6 chart along with a billing statement does not satisfy the obligation
7 under this section.

8 (b) For purposes of this section:

9 (1) "Credit card" has the same meaning as in paragraph (2) of
10 subdivision (a) of Section 1748.12.

11 (2) "Open-end credit card account" means an account in which
12 consumer credit is granted by a creditor under a plan in which the
13 creditor reasonably contemplates repeated transactions, the creditor
14 may impose a finance charge from time to time on an unpaid
15 balance, and the amount of credit that may be extended to the
16 consumer during the term of the plan is generally made available
17 to the extent that any outstanding balance is repaid and up to any
18 limit set by the creditor.

19 (3) "Retail credit card" means a credit card is issued by or on
20 behalf of a retailer, or a private label credit card that is limited to
21 customers of a specific retailer.

22 (c) (1) This section shall not apply in any billing cycle in which
23 the account agreement requires a minimum payment of at least 10
24 percent of the outstanding balance.

25 (2) This section shall not apply in any billing cycle in which
26 finance charges are not imposed.

27 SEC. 4. Section 1789.12 of the Civil Code is amended to read:
28 1789.12. As used in this title:

29 (a) "Credit services organization" means a person who, with
30 respect to the extension of credit by others, sells, provides, or
31 performs, or represents that he or she can or will sell, provide or
32 perform, any of the following services, in return for the payment
33 of money or other valuable consideration:

34 (1) Improving a buyer's credit record, history, or rating.

35 (2) Obtaining a loan or other extension of credit for a buyer.

36 (3) Providing advice or assistance to a buyer with regard to
37 either paragraph (1) or (2).

38 (b) "Credit services organization" does not include any of the
39 following:

1 (1) Any person holding a license to make loans or extensions
2 of credit pursuant to the laws of this state or the United States who
3 is subject to regulation and supervision with respect to the making
4 of those loans or extensions of credit by an official or agency of
5 this state or the United States and whose business is the making
6 of those loans or extensions of credit.

7 (2) Any bank, as defined in Section 102 of the Financial Code,
8 or any savings institution, as specified in subdivision (a) or (b) of
9 Section 5102 of the Financial Code, whose deposits or accounts
10 are eligible for insurance by the Federal Deposit Insurance
11 Corporation.

12 (3) Any person licensed as a prorater by the Department of
13 Business Oversight when the person is acting within the course
14 and scope of that license.

15 (4) Any person licensed as a real estate broker performing an
16 act for which a real estate license is required under the Real Estate
17 Law (Pt. 1 (commencing with Sec. 10000), Div. 4, B. & P.C.) and
18 who is acting within the course and scope of that license.

19 (5) Any attorney licensed to practice law in this state, where
20 the attorney renders services within the course and scope of the
21 practice of law, unless the attorney is an employee of, or otherwise
22 directly affiliated with, a credit services organization.

23 (6) Any broker-dealer registered with the Securities and
24 Exchange Commission or the Commodity Futures Trading
25 Commission where the broker-dealer is acting within the course
26 and scope of the regulation.

27 (7) Any nonprofit organization described in Section 501(c)(3)
28 of the Internal Revenue Code that, according to a final ruling or
29 determination by the Internal Revenue Service, is both of the
30 following:

31 (A) Exempt from taxation under Section 501(a) of the Internal
32 Revenue Code.

33 (B) Not a private foundation as defined in Section 509 of the
34 Internal Revenue Code.

35 An advance ruling or determination of tax-exempt or foundation
36 status by the Internal Revenue Service does not meet the
37 requirements of this paragraph.

38 (c) “Buyer” means any natural person who is solicited to
39 purchase or who purchases the services of a credit services
40 organization.

1 (d) "Extension of credit" means the right to defer payment of
2 debt or to incur debt and defer its payment, offered or granted
3 primarily for personal, family, or household purposes.

4 (e) "Consumer credit reporting agency" means a consumer credit
5 reporting agency subject to the Consumer Credit Reporting
6 Agencies Act, Title 1.6 (commencing with Section 1785.1).

7 (f) "Person" includes an individual, corporation, partnership,
8 joint venture, or any business entity.

9 SEC. 5. Section 1812.201 of the Civil Code is amended to
10 read:

11 1812.201. For the purposes of this title, the following
12 definitions shall apply:

13 (a) "Seller assisted marketing plan" means any sale or lease or
14 offer to sell or lease any product, equipment, supplies, or services
15 that requires a total initial payment exceeding five hundred dollars
16 (\$500), but requires an initial cash payment of less than fifty
17 thousand dollars (\$50,000), that will aid a purchaser or will be
18 used by or on behalf of the purchaser in connection with or
19 incidental to beginning, maintaining, or operating a business when
20 the seller assisted marketing plan seller has advertised or in any
21 other manner solicited the purchase or lease of the seller assisted
22 marketing plan and done any of the following acts:

23 (1) Represented that the purchaser will earn, is likely to earn,
24 or can earn an amount in excess of the initial payment paid by the
25 purchaser for participation in the seller assisted marketing plan.

26 (2) Represented that there is a market for the product, equipment,
27 supplies, or services, or any product marketed by the user of the
28 product, equipment, supplies, or services sold or leased or offered
29 for sale or lease to the purchaser by the seller, or anything, be it
30 tangible or intangible, made, produced, fabricated, grown, bred,
31 modified, or developed by the purchaser using, in whole or in part,
32 the product, supplies, equipment, or services that were sold or
33 leased or offered for sale or lease to the purchaser by the seller
34 assisted marketing plan seller.

35 (3) Represented that the seller will buy back or is likely to buy
36 back any product made, produced, fabricated, grown, or bred by
37 the purchaser using, in whole or in part, the product, supplies,
38 equipment, or services that were initially sold or leased or offered
39 for sale or lease to the purchaser by the seller assisted marketing
40 plan seller.

1 (b) A “seller assisted marketing plan” shall not include:

2 (1) A security, as defined in the Corporate Securities Law of
3 1968 (Division 1 (commencing with Section 25000) of Title 4 of
4 the Corporations Code), that has been qualified for sale by the
5 Department of Business Oversight, or is exempt under Chapter 1
6 (commencing with Section 25100) of Part 2 of Division 1 of Title
7 4 of the Corporations Code from the necessity to qualify.

8 (2) A franchise defined by the Franchise Investment Law
9 (Division 5 (commencing with Section 31000) of Title 4 of the
10 Corporations Code) that is registered with the Department of
11 Business Oversight or is exempt under Chapter 1 (commencing
12 with Section 31100) of Part 2 of Division 5 of Title 4 of the
13 Corporations Code from the necessity of registering.

14 (3) Any transaction in which either the seller or purchaser or
15 the lessor or lessee is licensed pursuant to and the transaction is
16 governed by the Real Estate Law, Division 4 (commencing with
17 Section 10000) of the Business and Professions Code.

18 (4) A license granted by a general merchandise retailer that
19 allows the licensee to sell goods, equipment, supplies, products,
20 or services to the general public under the retailer’s trademark,
21 trade name, or service mark if all of the following criteria are
22 satisfied:

23 (A) The general merchandise retailer has been doing business
24 in this state continually for five years prior to the granting of the
25 license.

26 (B) The general merchandise retailer sells diverse kinds of
27 goods, equipment, supplies, products, or services.

28 (C) The general merchandise retailer also sells the same goods,
29 equipment, supplies, products, or services directly to the general
30 public.

31 (D) During the previous 12 months the general merchandise
32 retailer’s direct sales of the same goods, equipment, supplies,
33 products, or services to the public account for at least 50 percent
34 of its yearly sales of these goods, equipment, supplies, products,
35 or services made under the retailer’s trademark, trade name, or
36 service mark.

37 (5) A newspaper distribution system distributing newspapers
38 as defined in Section 6362 of the Revenue and Taxation Code.

39 (6) A sale or lease to an existing or beginning business enterprise
40 that also sells or leases equipment, products, supplies, or performs

1 services that are not supplied by the seller and that the purchaser
2 does not utilize with the equipment, products, supplies, or services
3 of the seller, if the equipment, products, supplies, or services not
4 supplied by the seller account for more than 25 percent of the
5 purchaser's gross sales.

6 (7) The sale in the entirety of an "ongoing business." For
7 purposes of this paragraph, an "ongoing business" means a business
8 that for at least six months previous to the sale has been operated
9 from a particular specific location, has been open for business to
10 the general public, and has had all equipment and supplies
11 necessary for operating the business located at that location. The
12 sale shall be of the entire "ongoing business" and not merely a
13 portion of the ongoing business.

14 (8) A sale or lease or offer to sell or lease to a purchaser (A)
15 who has for a period of at least six months previously bought
16 products, supplies, services, or equipment that were sold under the
17 same trademark or trade name or that were produced by the seller
18 and, (B) who has received on resale of the product, supplies,
19 services, or equipment an amount that is at least equal to the
20 amount of the initial payment.

21 (9) The renewal or extension of an existing seller assisted
22 marketing plan contract.

23 (10) A product distributorship that meets each of the following
24 requirements:

25 (A) The seller sells products to the purchaser for resale by the
26 purchaser, and it is reasonably contemplated that substantially all
27 of the purchaser's sales of the product will be at wholesale.

28 (B) The agreement between the parties does not require that the
29 purchaser pay the seller, or any person associated with the seller,
30 a fee or any other payment for the right to enter into the agreement,
31 and does not require the purchaser to buy a minimum or specified
32 quantity of the products, or to buy products for a minimum or
33 specified period of time. For purposes of this paragraph, a "person
34 associated with the seller" means a person, including an individual
35 or a business entity, controlling, controlled by, or under the same
36 control as the seller.

37 (C) The seller is a corporation, partnership, limited liability
38 company, joint venture, or any other business entity.

39 (D) The seller has a net worth of at least ten million dollars
40 (\$10,000,000) according to audited financial statements of the

1 seller done during the 18 months preceding the date of the initial
2 sale of products to the purchaser. Net worth may be determined
3 on a consolidated basis if the seller is a subsidiary of another
4 business entity that is permitted by generally accepted accounting
5 standards to prepare financial statements on a consolidated basis
6 and that business entity absolutely and irrevocably agrees in writing
7 to guarantee the seller's obligations to the purchaser. The seller's
8 net worth shall be verified by a certification to the Attorney General
9 from an independent certified public accountant that the audited
10 financial statement reflects a net worth of at least ten million dollars
11 (\$10,000,000). This certification shall be provided within 30 days
12 following receipt of a written request from the Attorney General.

13 (E) The seller grants the purchaser a license to use a trademark
14 that is registered under federal law.

15 (F) It is not an agreement or arrangement encouraging a
16 distributor to recruit others to participate in the program and
17 compensating the distributor for recruiting others into the program
18 or for sales made by others recruited into the program.

19 (c) "Person" includes an individual, corporation, partnership,
20 limited liability company, joint venture, or any business entity.

21 (d) "Seller" means a person who sells or leases or offers to sell
22 or lease a seller assisted marketing plan and who meets either of
23 the following conditions:

24 (1) Has sold or leased or represents or implies that the seller
25 has sold or leased, whether in California or elsewhere, at least five
26 seller assisted marketing plans within 24 months prior to a
27 solicitation.

28 (2) Intends or represents or implies that the seller intends to sell
29 or lease, whether in California or elsewhere, at least five seller
30 assisted marketing plans within 12 months following a solicitation.

31 For purposes of this title, the seller is the person to whom the
32 purchaser becomes contractually obligated. A "seller" does not
33 include a licensed real estate broker or salesman who engages in
34 the sale or lease of a "business opportunity" as that term is used
35 in Sections 10000 to 10030, inclusive, of the Business and
36 Professions Code, or elsewhere in Chapter 1 (commencing with
37 Section 10000), Chapter 2 (commencing with Section 10050), or
38 Chapter 6 (commencing with Section 10450) of Part 1 of Division
39 4 of the Business and Professions Code.

1 (e) “Purchaser” means a person who is solicited to become
2 obligated or does become obligated on a seller assisted marketing
3 plan contract.

4 (f) “Equipment” includes machines, all electrical devices, video
5 or audio devices, molds, display racks, vending machines, coin
6 operated game machines, machines that dispense products, and
7 display units of all kinds.

8 (g) “Supplies” includes any and all materials used to produce,
9 grow, breed, fabricate, modify, develop, or make any product or
10 item.

11 (h) “Product” includes any tangible chattel, including food or
12 living animals, that the purchaser intends to:

13 (1) Sell or lease.

14 (2) Use to perform a service.

15 (3) Resell or attempt to resell to the seller assisted marketing
16 plan seller.

17 (4) Provide or attempt to provide to the seller assisted marketing
18 plan seller or to any other person whom the seller suggests the
19 purchaser contact so that the seller assisted marketing plan seller
20 or that other person may assist, either directly or indirectly, the
21 purchaser in distributing, selling, leasing, or otherwise disposing
22 of the product.

23 (i) “Services” includes any assistance, guidance, direction, work,
24 labor, or services provided by the seller to initiate or maintain or
25 assist in the initiation or maintenance of a business.

26 (j) “Seller assisted marketing plan contract” or “contract” means
27 any contract or agreement that obligates a purchaser to a seller.

28 (k) “Initial payment” means the total amount a purchaser is
29 obligated to pay to the seller under the terms of the seller assisted
30 marketing plan contract prior to or at the time of delivery of the
31 equipment, supplies, products, or services or within six months of
32 the purchaser commencing operation of the seller assisted
33 marketing plan. If the contract sets forth a specific total sale price
34 for purchase of the seller assisted marketing plan which total price
35 is to be paid partially as a downpayment and then in specific
36 monthly payments, the “initial payment” means the entire total
37 sale price.

38 (l) “Initial cash payment” or “downpayment” means that portion
39 of the initial payment that the purchaser is obligated to pay to the
40 seller prior to or at the time of delivery of equipment, supplies,

1 products, or services. It does not include any amount financed by
2 or for which financing is to be obtained by the seller, or financing
3 that the seller assists in obtaining.

4 (m) “Buy-back” or “secured investment” means any
5 representation that implies in any manner that the purchaser’s
6 initial payment is protected from loss. These terms include a
7 representation or implication of any of the following:

8 (1) That the seller may repurchase either all or part of what it
9 sold to the purchaser.

10 (2) That the seller may at some future time pay the purchaser
11 the difference between what has been earned and the initial
12 payment.

13 (3) That the seller may in the ordinary course buy from the
14 purchaser items made, produced, fabricated, grown, bred, modified,
15 or developed by the purchaser using, in whole or in part, the
16 product, supplies, equipment, or services that were initially sold
17 or leased to the purchaser by the seller.

18 (4) That the seller or a person to whom the seller will refer the
19 purchaser may in the ordinary course sell, lease, or distribute the
20 items the purchaser has for sale or lease.

21 SEC. 6. Section 2923.3 of the Civil Code is amended to read:

22 2923.3. (a) With respect to residential real property containing
23 no more than four dwelling units, a mortgagee, trustee, beneficiary,
24 or authorized agent shall provide to the mortgagor or trustor a copy
25 of the recorded notice of default with an attached separate summary
26 document of the notice of default in English and the languages
27 described in Section 1632, as set forth in subdivision (c), and a
28 copy of the recorded notice of sale with an attached separate
29 summary document of the information required to be contained
30 in the notice of sale in English and the languages described in
31 Section 1632, as set forth in subdivision (d). These summaries are
32 not required to be recorded or published. This subdivision shall
33 become operative on April 1, 2013, or 90 days following the
34 issuance of the translations by the Department of Business
35 Oversight pursuant to subdivision (b), whichever is later.

36 (b) (1) The Department of Business Oversight shall provide a
37 standard translation of the statement in paragraph (1) of subdivision
38 (c), and of the summary of the notice of default, as set forth in
39 paragraph (2) of subdivision (c) in the languages described in
40 Section 1632.

(2) The Department of Business Oversight shall provide a standard translation of the statement in paragraph (1) of subdivision (d), and of the summary of the notice of sale, as set forth in paragraph (2) of subdivision (d).

(3) The department shall make the translations described in paragraphs (1) and (2) available without charge on its Internet Web site. Any mortgagee, trustee, beneficiary, or authorized agent who provides the department's translations in the manner prescribed by this section shall be in compliance with this section.

(c) (1) The following statement shall appear in the languages described in Section 1632 at the beginning of the notice of default:

NOTE: THERE IS A SUMMARY OF THE INFORMATION IN THIS DOCUMENT ATTACHED.

(2) The following summary of key information shall be attached to the copy of the notice of default provided to the mortgagor or trustor:

SUMMARY OF KEY INFORMATION

The attached notice of default was sent to [name of the trustor], in relation to [description of the property that secures the mortgage or deed of trust in default]. This property may be sold to satisfy your obligation and any other obligation secured by the deed of trust or mortgage that is in default. [Trustor] has, as described in the notice of default, breached the mortgage or deed of trust on the property described above.

IMPORTANT NOTICE: IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until approximately 90 days from the date the attached notice of default may be recorded (which date of recordation appears on the notice).

This amount is _____ as of ____ (date) _____ and will increase until your account becomes current.

1 While your property is in foreclosure, you still must pay other
2 obligations (such as insurance and taxes) required by your note
3 and deed of trust or mortgage. If you fail to make future payments
4 on the loan, pay taxes on the property, provide insurance on the
5 property, or pay other obligations as required in the note and deed
6 of trust or mortgage, the beneficiary or mortgagee may insist that
7 you do so in order to reinstate your account in good standing. In
8 addition, the beneficiary or mortgagee may require as a condition
9 to reinstatement that you provide reliable written evidence that
10 you paid all senior liens, property taxes, and hazard insurance
11 premiums.

12 Upon your written request, the beneficiary or mortgagee will
13 give you a written itemization of the entire amount you must pay.
14 You may not have to pay the entire unpaid portion of your account,
15 even though full payment was demanded, but you must pay all
16 amounts in default at the time payment is made. However, you
17 and your beneficiary or mortgagee may mutually agree in writing
18 prior to the time the notice of sale is posted (which may not be
19 earlier than three months after this notice of default is recorded)
20 to, among other things, (1) provide additional time in which to
21 cure the default by transfer of the property or otherwise; or (2)
22 establish a schedule of payments in order to cure your default; or
23 both (1) and (2).

24 Following the expiration of the time period referred to in the
25 first paragraph of this notice, unless the obligation being foreclosed
26 upon or a separate written agreement between you and your creditor
27 permits a longer period, you have only the legal right to stop the
28 sale of your property by paying the entire amount demanded by
29 your creditor.

30 To find out the amount you must pay, or to arrange for payment
31 to stop the foreclosure, or if your property is in foreclosure for any
32 other reason, contact:

33 _____
34 (Name of beneficiary or mortgagee)

35 _____
36 (Mailing address)

37 _____
38 (Telephone)

39 If you have any questions, you should contact a lawyer or the
40 governmental agency which may have insured your loan.

1 Notwithstanding the fact that your property is in foreclosure,
2 you may offer your property for sale, provided the sale is concluded
3 prior to the conclusion of the foreclosure.

4 Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO
5 NOT TAKE PROMPT ACTION.

6 If you would like additional copies of this summary, you may
7 obtain them by calling [insert telephone number].

8 (d) (1) The following statement shall appear in the languages
9 described in Section 1632 at the beginning of the notice of sale:

10
11 NOTE: THERE IS A SUMMARY OF THE INFORMATION
12 IN THIS DOCUMENT ATTACHED.

13
14 (2) The following summary of key information shall be attached
15 to the copy of the notice of sale provided to the mortgagor or
16 trustor:

17
18 SUMMARY OF KEY INFORMATION

19 The attached notice of sale was sent to [trustor], in relation to
20 [description of the property that secures the mortgage or deed of
21 trust in default].

22 YOU ARE IN DEFAULT UNDER A (Deed of trust or
23 mortgage) DATED _____. UNLESS YOU TAKE ACTION TO
24 PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A
25 PUBLIC SALE.

26 IF YOU NEED AN EXPLANATION OF THE NATURE OF
27 THE PROCEEDING AGAINST YOU, YOU SHOULD
28 CONTACT A LAWYER.

29 The total amount due in the notice of sale is _____.

30 Your property is scheduled to be sold on [insert date and time
31 of sale] at [insert location of sale].

32 However, the sale date shown on the attached notice of sale may
33 be postponed one or more times by the mortgagee, beneficiary,
34 trustee, or a court, pursuant to Section 2924g of the California
35 Civil Code. The law requires that information about trustee sale
36 postponements be made available to you and to the public, as a
37 courtesy to those not present at the sale. If you wish to learn
38 whether your sale date has been postponed, and, if applicable, the
39 rescheduled time and date for the sale of this property, you may
40 call [telephone number for information regarding the trustee's sale]

1 or visit this Internet Web site [Internet Web site address for
2 information regarding the sale of this property], using the file
3 number assigned to this case [case file number]. Information about
4 postponements that are very short in duration or that occur close
5 in time to the scheduled sale may not immediately be reflected in
6 the telephone information or on the Internet Web site. The best
7 way to verify postponement information is to attend the scheduled
8 sale.

9 If you would like additional copies of this summary, you may
10 obtain them by calling [insert telephone number].

11 (e) Failure to provide these summaries to the mortgagor or
12 trustor shall have the same effect as if the notice of default or notice
13 of sale were incomplete or not provided.

14 (f) This section sets forth a requirement for translation in
15 languages other than English, and a document complying with the
16 provisions of this section may be recorded pursuant to subdivision
17 (b) of Section 27293 of the Government Code. A document that
18 complies with this section shall not be rejected for recordation on
19 the ground that some part of the document is in a language other
20 than English.

21
22 SEC. 7. Section 1101.1 of the Corporations Code is amended
23 to read:

24 1101.1. Subdivision (c) of Section 1113 and subdivision (b)
25 of Section 1101 do not apply to any transaction if the
26 Commissioner of Business Oversight, the Insurance Commissioner
27 ~~or, Commissioner, or~~ the Public Utilities Commission has approved
28 the terms and conditions of the transaction and the fairness of those
29 terms and conditions pursuant to Section 25142 or Section 1209,
30 5750, or 5802 of the Financial Code, Section 838.5 of the Insurance
31 Code, or Section 822 of the Public Utilities Code.

32 SEC. 8. Section 2207 of the Corporations Code is amended to
33 read:

34 2207. (a) A corporation is liable for a civil penalty in an
35 amount not exceeding one million dollars (\$1,000,000) if the
36 corporation does both of the following:

37 (1) Has actual knowledge that an officer, director, manager, or
38 agent of the corporation does any of the following:

1 (A) Makes, publishes, or posts, or has made, published, or
2 posted, either generally or privately to the shareholders or other
3 persons, either of the following:

4 (i) An oral, written, or electronically transmitted report, exhibit,
5 notice, or statement of its affairs or pecuniary condition that
6 contains a material statement or omission that is false and intended
7 to give the shares of stock in the corporation a materially greater
8 or a materially less apparent market value than they really possess.

9 (ii) An oral, written, or electronically transmitted report,
10 prospectus, account, or statement of operations, values, business,
11 profits, or expenditures, that includes a material false statement or
12 omission intended to give the shares of stock in the corporation a
13 materially greater or a materially less apparent market value than
14 they really possess.

15 (B) Refuses or has refused to make any book entry or post any
16 notice required by law in the manner required by law.

17 (C) Misstates or conceals or has misstated or concealed from a
18 regulatory body a material fact in order to deceive a regulatory
19 body to avoid a statutory or regulatory duty, or to avoid a statutory
20 or regulatory limit or prohibition.

21 (2) Within 30 days after actual knowledge is acquired of the
22 actions described in paragraph (1), the corporation knowingly fails
23 to do both of the following:

24 (A) Notify the Attorney General or appropriate government
25 agency in writing, unless the corporation has actual knowledge
26 that the Attorney General or appropriate government agency has
27 been notified.

28 (B) Notify its shareholders in writing, unless the corporation
29 has actual knowledge that the shareholders have been notified.

30 (b) The requirement for notification under this section is not
31 applicable if the action taken or about to be taken by the
32 corporation, or by an officer, director, manager, or agent of the
33 corporation under paragraph (1) of subdivision (a), is abated within
34 the time prescribed for reporting, unless the appropriate
35 government agency requires disclosure by regulation.

36 (c) If the action reported to the Attorney General pursuant to
37 this section implicates the government authority of an agency other
38 than the Attorney General, the Attorney General shall promptly
39 forward the written notice to that agency.

(d) If the Attorney General was not notified pursuant to subparagraph (A) of paragraph (2) of subdivision (a), but the corporation reasonably and in good faith believed that it had complied with the notification requirements of this section by notifying a government agency listed in paragraph (5) of subdivision (e), no penalties shall apply.

(e) For purposes of this section:

(1) “Manager” means a person having both of the following:

(A) Management authority over a business entity.

(B) Significant responsibility for an aspect of a business that includes actual authority for the financial operations or financial transactions of the business.

(2) “Agent” means a person or entity authorized by the corporation to make representations to the public about the corporation’s financial condition and who is acting within the scope of the agency when the representations are made.

(3) “Shareholder” means a person or entity that is a shareholder of the corporation at the time the disclosure is required pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

(4) “Notify its shareholders” means to give sufficient description of an action taken or about to be taken that would constitute acts or omissions as described in paragraph (1) of subdivision (a). A notice or report filed by a corporation with the United States Securities and Exchange Commission that relates to the facts and circumstances giving rise to an obligation under paragraph (1) of subdivision (a) shall satisfy all notice requirements arising under paragraph (2) of subdivision (a), but shall not be the exclusive means of satisfying the notice requirements, provided that the Attorney General or appropriate agency is informed in writing that the filing has been made together with a copy of the filing or an electronic link where it is available online without charge.

(5) “Appropriate government agency” means an agency on the following list that has regulatory authority with respect to the financial operations of a corporation:

(A) Department of Business Oversight.

(B) Department of Insurance.

(C) Department of Managed Health Care.

(D) United States Securities and Exchange Commission.

(6) “Actual knowledge of the corporation” means the knowledge an officer or director of a corporation actually possesses or does

1 not consciously avoid possessing, based on an evaluation of
2 information provided pursuant to the corporation's disclosure
3 controls and procedures.

4 (7) "Refuse to make a book entry" means the intentional decision
5 not to record an accounting transaction when all of the following
6 conditions are satisfied:

7 (A) The independent auditors required recordation of an
8 accounting transaction during the course of an audit.

9 (B) The audit committee of the corporation has not approved
10 the independent auditor's recommendation.

11 (C) The decision is made for the primary purpose of rendering
12 the financial statements materially false or misleading.

13 (8) "Refuse to post any notice required by law" means an
14 intentional decision not to post a notice required by law when all
15 of the following conditions exist:

16 (A) The decision not to post the notice has not been approved
17 by the corporation's audit committee.

18 (B) The decision is intended to give the shares of stock in the
19 corporation a materially greater or a materially less apparent market
20 value than they really possess.

21 (9) "Misstate or conceal material facts from a regulatory body"
22 means an intentional decision not to disclose material facts when
23 all of the following conditions exist:

24 (A) The decision not to disclose material facts has not been
25 approved by the corporation's audit committee.

26 (B) The decision is intended to give the shares of stock in the
27 corporation a materially greater or a materially less apparent market
28 value than they really possess.

29 (10) "Material false statement or omission" means an untrue
30 statement of material fact or an omission to state a material fact
31 necessary in order to make the statements made under the
32 circumstances under which they were made not misleading.

33 (11) "Officer" means any person as set forth in Rule ~~16A-1~~
34 *16a-1* promulgated under the Securities Exchange Act of 1934 or
35 any successor regulation thereto, except an officer of a subsidiary
36 corporation who is not also an officer of the parent corporation.

37 (f) This section only applies to corporations that are issuers, as
38 defined in Section 2 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
39 Sec. 7201 and following).

(g) An action to enforce this section may only be brought by the Attorney General or a district attorney or city attorney in the name of the people of the State of California.

SEC. 9. Section 2510 of the Corporations Code is amended to read:

2510. “Social purpose corporation subject to the Banking Law” means any of the following:

(a) A social purpose corporation that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, the commercial banking business under the Banking Law (Division 1 (commencing with Section 99) of the Financial Code).

(b) Any social purpose corporation that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, the industrial banking business under the Banking Law (Division 1 (commencing with Section 99) of the Financial Code).

(c) Any social purpose corporation, other than a social purpose corporation described in subdivision (d), that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, the trust business under the Banking Law (Division 1 (commencing with Section 99) of the Financial Code).

(d) Any social purpose corporation that is authorized by the Commissioner of Business Oversight and the Commissioner of Insurance to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business.

(e) Any social purpose corporation that, with the approval of the Commissioner of Business Oversight, is incorporated for the purpose of engaging in, or that is authorized by the Commissioner of Business Oversight to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19 of Division 1 of the Financial Code.

SEC. 10. Section 3100 of the Corporations Code is amended to read:

1 3100. (a) A social purpose corporation may sell, lease, convey,
2 exchange, transfer, or otherwise dispose of all or substantially all
3 of its assets when the principal terms of the transaction are
4 approved by the board and are approved by an affirmative vote of
5 at least two-thirds of the outstanding shares of each class, or a
6 greater vote if required in the articles, regardless of whether that
7 class is entitled to vote thereon by the provisions of the articles,
8 either before or after approval by the board and before the
9 transaction. A transaction constituting a reorganization shall be
10 subject to Chapter 12 (commencing with Section 1200) of Division
11 1 and Chapter 10 (commencing with Section 3400) of this division
12 and shall not be subject to this section, other than subdivision (d).
13 A transaction constituting a conversion shall be subject to Chapter
14 11.5 (commencing with Section 1150) of Division 1 and Chapter
15 9 (commencing with Section 3300) of this division and shall not
16 be subject to this section.

17 (b) Notwithstanding approval of two-thirds of the outstanding
18 shares, the board may abandon the proposed transaction without
19 further action by the shareholders, subject to the contractual rights,
20 if any, of third parties.

21 (c) The sale, lease, conveyance, exchange, transfer, or other
22 disposition may be made upon those terms and conditions and for
23 that consideration as the board may deem in the best interests of
24 the social purpose corporation. The consideration may be money,
25 securities, or other property.

26 (d) If the acquiring party in a transaction pursuant to subdivision
27 (a) or subdivision (g) of Section 2001 is in control of or under
28 common control with the disposing social purpose corporation,
29 the principal terms of the sale shall be approved by at least 90
30 percent of the voting power of the disposing social purpose
31 corporation unless the disposition is to a domestic or foreign other
32 business entity or social purpose corporation, the articles of
33 incorporation of which specify materially the same purposes, in
34 consideration of the nonredeemable common shares or
35 nonredeemable equity securities of the acquiring party or its parent.

36 (e) Subdivision (d) shall not apply to a transaction if the
37 Commissioner of Business Oversight, the Insurance Commissioner,
38 or the Public Utilities Commission has approved the terms and
39 conditions of the transaction and the fairness of those terms and
40 conditions pursuant to Section 25142, Section 1209 of the Financial

1 Code, Section 838.5 of the Insurance Code, or Section 822 of the
2 Public Utilities Code.

3 SEC. 11. Section 17713.12 of the Corporations Code is
4 amended to read:

5 17713.12. (a) A limited liability company is liable for a civil
6 penalty in an amount not exceeding one million dollars
7 (\$1,000,000) if the limited liability company does both of the
8 following:

9 (1) Has actual knowledge that a member, officer, manager, or
10 agent of the limited liability company does any of the following:

11 (A) Makes, publishes, or posts, or has made, published, or
12 posted, either generally or privately to the shareholders or other
13 persons, either of the following:

14 (i) An oral, written, or electronically transmitted report, exhibit,
15 notice, or statement of its affairs or pecuniary condition that
16 contains a material statement or omission that is false and intended
17 to give membership shares in the limited liability company a
18 materially greater or a materially less apparent market value than
19 they really possess.

20 (ii) An oral, written, or electronically transmitted report,
21 prospectus, account, or statement of operations, values, business,
22 profits, or expenditures that includes a material false statement or
23 omission intended to give membership shares in the limited liability
24 company a materially greater or a materially less apparent market
25 value than they really possess.

26 (B) Refuses or has refused to make any book entry or post any
27 notice required by law in the manner required by law.

28 (C) Misstates or conceals or has misstated or concealed from a
29 regulatory body a material fact in order to deceive a regulatory
30 body to avoid a statutory or regulatory duty, or to avoid a statutory
31 or regulatory limit or prohibition.

32 (2) Within 30 days after actual knowledge is acquired of the
33 actions described in paragraph (1), the limited liability company
34 knowingly fails to do both of the following:

35 (A) Notify the Attorney General or appropriate government
36 agency in writing, unless the limited liability company has actual
37 knowledge that the Attorney General or appropriate government
38 agency has been notified.

1 (B) Notify its members and investors in writing, unless the
2 limited liability company has actual knowledge that the members
3 and investors have been notified.

4 (b) The requirement for notification under this section is not
5 applicable if the action taken or about to be taken by the limited
6 liability company, or by a member, officer, manager, or agent of
7 the limited liability company under paragraph (1) of subdivision
8 (a), is abated within the time prescribed for reporting, unless the
9 appropriate government agency requires disclosure by regulation.

10 (c) If the action reported to the Attorney General pursuant to
11 this section implicates the government authority of an agency other
12 than the Attorney General, the Attorney General shall promptly
13 forward the written notice to that agency.

14 (d) If the Attorney General was not notified pursuant to
15 subparagraph (A) of paragraph (2) of subdivision (a), but the
16 limited liability company reasonably and in good faith believed
17 that it had complied with the notification requirements of this
18 section by notifying a government agency listed in paragraph (5)
19 of subdivision (e), no penalties shall apply.

20 (e) For purposes of this section:

21 (1) “Manager” means a person defined by subdivision (m) of
22 Section 17701.01 having both of the following:

23 (A) Management authority over the limited liability company.

24 (B) Significant responsibility for an aspect of the limited liability
25 company that includes actual authority for the financial operations
26 or financial transactions of the limited liability company.

27 (2) “Agent” means a person or entity authorized by the limited
28 liability company to make representations to the public about the
29 limited liability company’s financial condition and who is acting
30 within the scope of the agency when the representations are made.

31 (3) “Member” means a person as defined by subdivision (o) of
32 Section 17701.01 that is a member of the limited liability company
33 at the time the disclosure is required pursuant to subparagraph (B)
34 of paragraph (2) of subdivision (a).

35 (4) “Notify its members” means to give sufficient description
36 of an action taken or about to be taken that would constitute acts
37 or omissions as described in paragraph (1) of subdivision (a). A
38 notice or report filed by a limited liability company with the United
39 States Securities and Exchange Commission that relates to the
40 facts and circumstances giving rise to an obligation under

1 paragraph (1) of subdivision (a) shall satisfy all notice requirements
2 arising under paragraph (2) of subdivision (a) but shall not be the
3 exclusive means of satisfying the notice requirements, provided
4 that the Attorney General or appropriate agency is informed in
5 writing that the filing has been made together with a copy of the
6 filing or an electronic link where it is available online without
7 charge.

8 (5) “Appropriate government agency” means an agency on the
9 following list that has regulatory authority with respect to the
10 financial operations of a limited liability company:

11 (A) Department of Business Oversight.

12 (B) Department of Insurance.

13 (C) Department of Managed Health Care.

14 (D) United States Securities and Exchange Commission.

15 (6) “Actual knowledge of the limited liability company” means
16 the knowledge a member, officer, or manager of a limited liability
17 company actually possesses or does not consciously avoid
18 possessing, based on an evaluation of information provided
19 pursuant to the limited liability company’s disclosure controls and
20 procedures.

21 (7) “Refuse to make a book entry” means the intentional decision
22 not to record an accounting transaction when all of the following
23 conditions are satisfied:

24 (A) The independent auditors required recordation of an
25 accounting transaction during the course of an audit.

26 (B) The audit committee of the limited liability company has
27 not approved the independent auditor’s recommendation.

28 (C) The decision is made for the primary purpose of rendering
29 the financial statements materially false or misleading.

30 (8) “Refuse to post any notice required by law” means an
31 intentional decision not to post a notice required by law when all
32 of the following conditions exist:

33 (A) The decision not to post the notice has not been approved
34 by the limited liability company’s audit committee.

35 (B) The decision is intended to give the membership shares in
36 the limited liability company a materially greater or a materially
37 less apparent market value than they really possess.

38 (9) “Misstate or conceal material facts from a regulatory body”
39 means an intentional decision not to disclose material facts when
40 all of the following conditions exist:

1 (A) The decision not to disclose material facts has not been
2 approved by the limited liability company's audit committee.

3 (B) The decision is intended to give the membership shares in
4 the limited liability company a materially greater or a materially
5 less apparent market value than they really possess.

6 (10) "Material false statement or omission" means an untrue
7 statement of material fact or an omission to state a material fact
8 necessary in order to make the statements made under the
9 circumstances under which they were made not misleading.

10 (11) "Officer" means a person appointed pursuant to Section
11 17703.02, except an officer of a specified subsidiary limited
12 liability company who is not also an officer of the parent limited
13 liability company.

14 (f) This section only applies to limited liability companies that
15 are issuers, as defined in Section 2 of the federal Sarbanes-Oxley
16 Act of 2002 (15 U.S.C. Sec. 7201 et seq.).

17 (g) An action to enforce this section may only be brought by
18 the Attorney General or a district attorney or city attorney in the
19 name of the people of the State of California.

20 SEC. 12. Section 25003 of the Corporations Code is amended
21 to read:

22 25003. (a) "Agent" means any individual, other than a
23 broker-dealer or a partner of a licensed broker-dealer, who
24 represents a broker-dealer or who for compensation represents an
25 issuer in effecting or attempting to effect purchases or sales of
26 securities in this state.

27 (b) "Agent" does not include an individual who only represents
28 an issuer in effecting transactions in securities exempted by
29 subdivision (a), (b), (e), (f), (g), (j), ~~(k)~~ (k), or (l) of Section 25100
30 or in effecting transactions exempted by Section 25102, and does
31 not include an individual who has no place of business in this state
32 if he or she effects transactions in this state exclusively with
33 broker-dealers.

34 (c) "Agent" does not include an associated person of a broker
35 or dealer effecting transactions described in Section 15(i)(4) of
36 the Securities Exchange Act of 1934, subject to the provisions of
37 Section 15(i)(3) of that act.

38 (d) An officer or director of a broker-dealer or issuer, or an
39 individual occupying a similar status or performing similar
40 functions, is an agent only if he *or she* otherwise comes within

1 this definition and receives compensation specifically related to
2 purchases or sales of securities.

3 SEC. 13. Section 25018 of the Corporations Code is amended
4 to read:

5 25018. “Securities Act of 1933,” “Securities Exchange Act of
6 1934,” “Investment Advisers Act of 1940,” and “Investment
7 Company Act of 1940” mean the federal statutes of those names
8 as amended before or after the effective date of this law.

9 SEC. 14. Section 25100 of the Corporations Code is amended
10 to read:

11 25100. The following securities are exempted from Sections
12 25110, 25120, and 25130:

13 (a) Any security (including a revenue obligation) issued or
14 guaranteed by the United States, any state, any city, county, city
15 and county, public district, public authority, public corporation,
16 public entity, or political subdivision of a state or any agency or
17 corporate or other instrumentality of any one or more of the
18 foregoing; or any certificate of deposit for any of the foregoing.

19 (b) Any security issued or guaranteed by Canada, any Canadian
20 province, any political subdivision or municipality of that province,
21 or by any other foreign government with which the United States
22 currently maintains diplomatic relations, if the security is
23 recognized as a valid obligation by the issuer or guarantor; or any
24 certificate of deposit for any of the foregoing.

25 (c) Any security issued or guaranteed by and representing an
26 interest in or a direct obligation of a national bank or a bank or
27 trust company incorporated under the laws of this state, and any
28 security issued by a bank to one or more other banks and
29 representing an interest in an asset of the issuing bank.

30 (d) Any security issued or guaranteed by a federal savings
31 association or federal savings bank or federal land bank or joint
32 land bank or national farm loan association or by any savings
33 association, as defined in subdivision (a) of Section 5102 of the
34 Financial Code, which is subject to the supervision and regulation
35 of the Commissioner of ~~Financial Institutions~~ *Business Oversight*
36 of this state.

37 (e) Any security (other than an interest in all or portions of a
38 parcel or parcels of real property which are subdivided land or a
39 subdivision or in a real estate development), the issuance of which
40 is subject to authorization by the Insurance Commissioner, the

1 Public Utilities Commission, or the Real Estate Commissioner of
2 this state.

3 (f) Any security consisting of any interest in all or portions of
4 a parcel or parcels of real property ~~which~~ *that* are subdivided lands
5 or a subdivision or in a real estate development; provided that the
6 exemption in this subdivision shall not be applicable to: (1) any
7 investment contract sold or offered for sale with, or as part of, that
8 interest, or (2) any person engaged in the business of selling,
9 distributing, or supplying water for irrigation purposes or domestic
10 use that is not a public utility except that the exemption is
11 applicable to any security of a mutual water company (other than
12 an investment contract as described in paragraph (1)) offered or
13 sold in connection with subdivided lands pursuant to Chapter 2
14 (commencing with Section 14310) of Part 7 of Division 3 of Title
15 1.

16 (g) Any mutual capital certificates or savings accounts, as
17 defined in the Savings Association Law, issued by a savings
18 association, as defined by subdivision (a) of Section 5102 of the
19 Financial Code, and holding a license or certificate of authority
20 then in force from the Commissioner of ~~Financial Institutions~~
21 *Business Oversight* of this state.

22 (h) Any security issued or guaranteed by any federal credit
23 union, or by any credit union organized and supervised, or
24 regulated, under the Credit Union Law.

25 (i) Any security issued or guaranteed by any railroad, other
26 common carrier, public utility, or public utility holding company
27 is (1) subject to jurisdiction of the Federal Energy Regulatory
28 Commission under the Public Utility Holding Company Act of
29 2005 regulated in respect to its rates and charges by the United
30 States or a state or (2) regulated in respect of the issuance or
31 guarantee of the security by a governmental authority of the United
32 States, of any state, of Canada or of any Canadian province; and
33 the security is subject to registration with or authorization of
34 issuance by that authority.

35 (j) Any security (except evidences of indebtedness, whether
36 interest bearing or not) of an issuer (1) organized exclusively for
37 educational, benevolent, fraternal, religious, charitable, social, or
38 reformatory purposes and not for pecuniary profit, if no part of the
39 net earnings of the issuer inures to the benefit of any private
40 shareholder or individual, or (2) organized as a chamber of

1 commerce or trade or professional association. The fact that
2 amounts received from memberships or dues or both will or may
3 be used to construct or otherwise acquire facilities for use by
4 members of the nonprofit organization does not disqualify the
5 organization for this exemption. This exemption does not apply
6 to the securities of any nonprofit organization if any promoter
7 thereof expects or intends to make a profit directly or indirectly
8 from any business or activity associated with the organization or
9 operation of that nonprofit organization or from remuneration
10 received from that nonprofit organization.

11 (k) Any agreement, commonly known as a “life income
12 contract,” of an issuer (1) organized exclusively for educational,
13 benevolent, fraternal, religious, charitable, social, or reformatory
14 purposes and not for pecuniary profit and (2) which the
15 commissioner designates by rule or order, with a donor in
16 consideration of a donation of property to that issuer and providing
17 for the payment to the donor or persons designated by him or her
18 of income or specified periodic payments from the donated
19 property or other property for the life of the donor or those other
20 persons.

21 (l) Any note, draft, bill of exchange, or banker’s acceptance
22 which is freely transferable and of prime quality, arises out of a
23 current transaction or the proceeds of which have been or are to
24 be used for current transactions, and which evidences an obligation
25 to pay cash within nine months of the date of issuance, exclusive
26 of days of grace, or any renewal of that paper which is likewise
27 limited, or any guarantee of that paper or of that renewal, provided
28 that the paper is not offered to the public in amounts of less than
29 twenty-five thousand dollars (\$25,000) in the aggregate to any one
30 purchaser. In addition, the commissioner may, by rule or order,
31 exempt any issuer of any notes, drafts, ~~bills of exchange~~ *bills of*
32 *exchange*, or banker’s acceptances from qualification of those
33 securities when the commissioner finds that the qualification is
34 not necessary or appropriate in the public interest or for the
35 protection of investors.

36 (m) Any security issued by any corporation organized and
37 existing under the provisions of Chapter 1 (commencing with
38 Section 54001) of Division 20 of the Food and Agricultural Code.

39 (n) Any beneficial interest in an employees’ pension,
40 profit-sharing, ~~stock bonus~~ *stock bonus*, or similar benefit plan

1 which meets the requirements for qualification under Section 401
2 of the federal Internal Revenue Code or any statute amendatory
3 thereof or supplementary thereto. A determination letter from the
4 Internal Revenue Service stating that an employees' pension,
5 profit-sharing, ~~stock bonus~~ *stock bonus*, or similar benefit plan
6 meets those requirements shall be conclusive evidence that the
7 plan is an employees' pension, profit-sharing, ~~stock bonus~~ *stock*
8 *bonus*, or similar benefit plan within the meaning of the first
9 sentence of this subdivision until the date the determination letter
10 is revoked in writing by the Internal Revenue Service, regardless
11 of whether or not the revocation is retroactive.

12 (o) Any security listed or approved for listing upon notice of
13 issuance on a national securities exchange, if the exchange has
14 been certified by rule or order of the commissioner and any warrant
15 or right to purchase or subscribe to the security. The exemption
16 afforded by this subdivision does not apply to securities listed or
17 approved for listing upon notice of issuance on a national securities
18 exchange, in a rollup transaction unless the rollup transaction is
19 an eligible rollup transaction as defined in Section 25014.7.

20 That certification of any exchange shall be made by the
21 commissioner upon the written request of the exchange if the
22 commissioner finds that the exchange, in acting on applications
23 for listing of common stock, substantially applies the minimum
24 standards set forth in either subparagraph (A) or (B) of paragraph
25 (1), and, in considering suspension or removal from listing,
26 substantially applies each of the criteria set forth in paragraph (2).

27 (1) Listing standards:

28 (A) (i) Shareholders' equity of at least four million dollars
29 (\$4,000,000).

30 (ii) Pretax income of at least seven hundred fifty thousand
31 dollars (\$750,000) in the issuer's last fiscal year or in two of its
32 last three fiscal years.

33 (iii) Minimum public distribution of 500,000 shares (exclusive
34 of the holdings of officers, directors, controlling shareholders, and
35 other concentrated or family holdings), together with a minimum
36 of 800 public holders or minimum public distribution of 1,000,000
37 shares together with a minimum of 400 public holders. The
38 exchange may also consider the listing of a company's securities
39 if the company has a minimum of 500,000 shares publicly held, a
40 minimum of 400 shareholders and daily trading volume in the

1 issue has been approximately 2,000 shares or more for the six
2 months preceding the date of application. In evaluating the
3 suitability of an issue for listing under this trading provision, the
4 exchange shall review the nature and frequency of that activity
5 and any other factors as it may determine to be relevant in
6 ascertaining whether the issue is suitable for trading. A security
7 that trades infrequently shall not be considered for listing under
8 this paragraph even though average daily volume amounts to 2,000
9 shares per day or more.

10 Companies whose securities are concentrated in a limited
11 geographical area, or whose securities are largely held in block by
12 institutional investors, normally may not be considered eligible
13 for listing unless the public distribution appreciably exceeds
14 500,000 shares.

15 (iv) Minimum price of three dollars (\$3) per share for a
16 reasonable period of time prior to the filing of a listing application;
17 provided, however, in certain instances an exchange may favorably
18 consider listing an issue selling for less than three dollars (\$3) per
19 share after considering all pertinent factors, including market
20 conditions in general, whether historically the issue has sold above
21 three dollars (\$3) per share, the applicant's capitalization, and the
22 number of outstanding and publicly held shares of the issue.

23 (v) An aggregate market value for publicly held shares of at
24 least three million dollars (\$3,000,000).

25 (B) (i) Shareholders' equity of at least four million dollars
26 (\$4,000,000).

27 (ii) Minimum public distribution set forth in clause (iii) of
28 subparagraph (A) of paragraph (1).

29 (iii) Operating history of at least three years.

30 (iv) An aggregate market value for publicly held shares of at
31 least fifteen million dollars (\$15,000,000).

32 (2) Criteria for consideration of suspension or removal from
33 listing:

34 (i) If a company that (A) has shareholders' equity of less than
35 one million dollars (\$1,000,000) has sustained net losses in each
36 of its two most recent fiscal years, or (B) has net tangible assets
37 of less than three million dollars (\$3,000,000) and has sustained
38 net losses in three of its four most recent fiscal years.

39 (ii) If the number of shares publicly held (excluding the holdings
40 of officers, directors, ~~controlling shareholders~~ *controlling*

1 *shareholders*, and other concentrated or family holdings) is less
2 than 150,000.

3 (iii) If the total number of shareholders is less than 400 or if the
4 number of shareholders of lots of 100 shares or more is less than
5 300.

6 (iv) If the aggregate market value of shares publicly held is less
7 than seven hundred fifty thousand dollars (\$750,000).

8 (v) If shares of common stock sell at a price of less than three
9 dollars (\$3) per share for a substantial period of time and the issuer
10 shall fail to effectuate a reverse stock split of the shares within a
11 reasonable period of time after being requested by the exchange
12 to take that action.

13 A national securities exchange, certified by rule or order of the
14 commissioner under this subdivision, shall file annual reports when
15 requested to do so by the commissioner. The annual reports shall
16 contain, by issuer: the variances granted to an exchange's listing
17 standards, including variances from corporate governance and
18 voting rights' standards, for any security of that issuer; the reasons
19 for the variances; a discussion of the review procedure instituted
20 by the exchange to determine the effect of the variances on
21 investors and whether the variances should be continued; and any
22 other information that the commissioner deems relevant. The
23 purpose of these reports is to assist the commissioner in
24 determining whether the quantitative and qualitative requirements
25 of this subdivision are substantially being met by the exchange in
26 general or with regard to any particular security.

27 The commissioner after appropriate notice and opportunity for
28 hearing in accordance with the provisions of the Administrative
29 Procedure Act, Chapter 5 (commencing with Section 11500) of
30 Part 1 of Division 3 of Title 2 of the Government Code, may, in
31 his or her discretion, by rule or order, decertify any exchange
32 previously certified that ceases substantially to apply the minimum
33 standards or criteria as set forth in paragraphs (1) and (2).

34 A rule or order of certification shall conclusively establish that
35 any security listed or approved for listing upon notice of issuance
36 on any exchange named in a rule or order of certification, and any
37 warrant or right to purchase or subscribe to that security, is exempt
38 under this subdivision until the adoption by the commissioner of
39 any rule or order decertifying the exchange.

1 (p) A promissory note secured by a lien on real property, which
2 is neither one of a series of notes of equal priority secured by
3 interests in the same real property nor a note in which beneficial
4 interests are sold to more than one person or entity.

5 (q) Any unincorporated interindemnity or reciprocal or
6 interinsurance contract, that qualifies under the provisions of
7 Section 1280.7 of the Insurance Code, between members of a
8 cooperative corporation, organized and operating under Part 2
9 (commencing with Section 12200) of Division 3 of Title 1, and
10 whose members consist only of physicians and surgeons licensed
11 in California, which contracts indemnify solely in respect to
12 medical malpractice claims against the members, and which do
13 not collect in advance of loss any moneys other than contributions
14 by each member to a collective reserve trust fund or for necessary
15 expenses of administration.

16 (1) Whenever it appears to the commissioner that any person
17 has engaged or is about to engage in any act or practice constituting
18 a violation of any provision of Section 1280.7 of the Insurance
19 Code, the commissioner may, in the commissioner's discretion,
20 bring an action in the name of the people of the State of California
21 in the superior court to enjoin the acts or practices or to enforce
22 compliance with Section 1280.7 of the Insurance Code. Upon a
23 proper showing a permanent or preliminary injunction, a restraining
24 order, or a writ of mandate shall be granted and a receiver or
25 conservator may be appointed for the defendant or the defendant's
26 assets.

27 (2) The commissioner may, in the commissioner's discretion,
28 (A) make public or private investigations within or outside of this
29 state as the commissioner deems necessary to determine whether
30 any person has violated or is about to violate any provision of
31 Section 1280.7 of the Insurance Code or to aid in the enforcement
32 of Section 1280.7, and (B) publish information concerning the
33 violation of Section 1280.7.

34 (3) For the purpose of any investigation or proceeding under
35 this section, the commissioner or any officer designated by the
36 commissioner may administer oaths and affirmations, subpoena
37 witnesses, compel their attendance, take evidence, and require the
38 production of any books, papers, correspondence, memoranda,
39 agreements, or other documents or records which the commissioner
40 deems relevant or material to the inquiry.

1 (4) In case of contumacy by, or refusal to obey a subpoena
2 issued to, any person, the superior court, upon application by the
3 commissioner, may issue to the person an order requiring the
4 person to appear before the commissioner, or the officer designated
5 by the commissioner, to produce documentary evidence, if so
6 ordered, or to give evidence touching the matter under investigation
7 or in question. Failure to obey the order of the court may be
8 punished by the court as a contempt.

9 (5) No person is excused from attending or testifying or from
10 producing any document or record before the commissioner or in
11 obedience to the subpoena of the commissioner or any officer
12 designated by the commissioner, or in any proceeding instituted
13 by the commissioner, on the ground that the testimony or evidence
14 (documentary or otherwise), required of the person may tend to
15 incriminate the person or subject the person to a penalty or
16 forfeiture, but no individual may be prosecuted or subjected to any
17 penalty or forfeiture for or on account of any transaction, matter,
18 or thing concerning which the person is compelled, after validly
19 claiming the privilege against self-incrimination, to testify or
20 produce evidence (documentary or otherwise), except that the
21 individual testifying is not exempt from prosecution and
22 punishment for perjury or contempt committed in testifying.

23 (6) The cost of any review, examination, audit, or investigation
24 made by the commissioner under Section 1280.7 of the Insurance
25 Code shall be paid to the commissioner by the person subject to
26 the review, examination, audit, or investigation, and the
27 commissioner may maintain an action for the recovery of these
28 costs in any court of competent jurisdiction. In determining the
29 cost, the commissioner may use the actual amount of the salary or
30 other compensation paid to the persons making the review,
31 examination, audit, or investigation plus the actual amount of
32 expenses including overhead reasonably incurred in the
33 performance of the work.

34 The recoverable cost of each review, examination, audit, or
35 investigation made by the commissioner under Section 1280.7 of
36 the Insurance Code shall not exceed twenty-five thousand dollars
37 (\$25,000), except that costs exceeding twenty-five thousand dollars
38 (\$25,000) shall be recoverable if the costs are necessary to prevent
39 a violation of any provision of Section 1280.7 of the Insurance
40 Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars (\$300). This exemption does not apply to the shares or memberships of that corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of that corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans that meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Financial Institutions, and each of which at the time of transfer to the pool is an authorized investment for the originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

1 (4) The security is not offered in amounts of less than
2 twenty-five thousand dollars (\$25,000) in the aggregate to any one
3 purchaser.

4 (5) The security is offered pursuant to a registration under the
5 Securities Act of 1933, or pursuant to an exemption under
6 Regulation A under that act, or in the opinion of counsel for the
7 issuer, is offered pursuant to an exemption under Section 4(2) of
8 that act.

9 (t) (1) Any security issued or guaranteed by and representing
10 an interest in or a direct obligation of an industrial loan company
11 incorporated under the laws of the state and authorized by the
12 Commissioner of Financial Institutions to engage in industrial loan
13 business.

14 (2) Any investment certificate in or issued by any industrial
15 loan company that is organized under the laws of a state of the
16 United States other than this state, that is insured by the Federal
17 Deposit Insurance Corporation, and that maintains a branch office
18 in this state.

19 SEC. 15. Section 25207 of the Corporations Code is amended
20 to read:

21 25207. A financial institution that undertakes activities with
22 respect to an investment company pursuant to the provisions of
23 Section 1514, 6524, 14652.5, or 18022.5 of the Financial Code
24 shall not be subject to Section 25210 or 25230 in connection with
25 such activities but shall be subject to Sections 25218, 25234,
26 25235, and 25237 and to subdivisions (a), (b), and (d) of Section
27 25216, and such rules thereunder as the commissioner may specify
28 by rule. Nothing in this section shall affect the status of such a
29 financial institution as a broker-dealer or investment adviser, or
30 the employees of such persons, when engaged in the activities
31 authorized by the provisions of the Financial Code specified above.

32 SEC. 16. Section 25243.5 of the Corporations Code is amended
33 to read:

34 25243.5. (a) A broker-dealer or investment adviser, or an agent
35 or representative thereof, shall not use a senior-specific
36 certification, credential, or professional designation in connection
37 with the offer, sale, or purchase of securities, or the provision of
38 advice as to the value of or the advisability of investing in,
39 purchasing, or selling securities, either directly or indirectly or
40 through publications or writings or by issuing or promulgating

1 analyses or reports relating to securities, that indicates or implies
2 that the broker-dealer, investment adviser, or an agent or
3 representative thereof, has special certification or training in
4 advising or servicing senior citizens or retirees, in such a way as
5 to mislead any person.

6 (b) The prohibited use of these certifications, credentials, or
7 professional designations includes, but is not limited to, the
8 following:

9 (1) The use of a certification, credential, or professional
10 designation by a person who has not actually earned or is otherwise
11 ineligible to use the certification, credential, or designation.

12 (2) The use of a nonexistent or self-conferred certification,
13 credential, or professional designation.

14 (3) The use of a certification, credential, or professional
15 designation that indicates or implies a level of occupational
16 qualifications obtained through education, training, or experience
17 that the person using the certification, credential, or professional
18 designation does not have.

19 (4) The use of a certification, credential, or professional
20 designation that was obtained from a designating, credentialing,
21 or certifying organization where any of the following apply:

22 (A) The organization is primarily engaged in the business of
23 instruction in sales marketing.

24 (B) The organization does not have reasonable standards or
25 procedures for assuring the competency of individuals to whom
26 it grants a certification, credential, or professional designation.

27 (C) The organization does not have reasonable standards or
28 procedures for monitoring and disciplining individuals with a
29 certification, credential, or professional designation for improper
30 or unethical conduct.

31 (D) The organization does not have reasonable continuing
32 education requirements for individuals with a certification,
33 credential, or professional designation in order to maintain the
34 certificate, credential, or professional designation.

35 (c) There is a rebuttable presumption that a designating,
36 credentialing, or certifying organization is not disqualified solely
37 for the purposes of paragraph (4) of subdivision (b) when the
38 organization has been accredited by the American National
39 Standards Institute, the National Commission for Certifying
40 Agencies, or an organization that is on the United States

1 Department of Education's list entitled "Accrediting Agencies
2 Recognized for Title IV Purposes" and the certification, credential,
3 or professional designation issued therefrom does not primarily
4 apply to sales and/or marketing.

5 (d) In determining whether a combination of words, or an
6 acronym standing for a combination of words, constitutes a
7 certification, credential, or professional designation indicating or
8 implying that a person has special certification or training in
9 advising or serving senior citizens or retirees, factors to be
10 considered shall include both of the following:

11 (1) Use of one or more word such as "senior," "retirement,"
12 "elder," or like words combined with one or more words such as
13 "certified," "registered," "chartered," "adviser," "specialist,"
14 "consultant," "planner," or like words, in the name of the
15 certification, credential, or professional designation or credential.

16 (2) The manner in which those words are combined.

17 (e) This section shall not apply to the use of a job title by a
18 person within an organization that is licensed or registered by the
19 Department of Business Oversight or a federal financial services
20 regulatory agency, when that job title indicates seniority or standing
21 within the organization, or specifies a person's area of
22 specialization within the organization. For the purposes of this
23 subdivision, federal financial services regulatory agency includes,
24 but is not limited to, an agency that regulates brokers or dealers,
25 investment advisers, or investment companies as described under
26 the Investment Company Act of 1940 (15 U.S.C. Sec. 809-1 et
27 seq.).

28 (f) (1) This section shall not apply to a broker or agent who is
29 licensed by the Department of Insurance and is in compliance with
30 the requirements of Section 787.1 of the Insurance Code.

31 (2) This subdivision shall be operative only if Assembly Bill
32 2150 of the 2007-08 Regular Session is chaptered and becomes
33 effective and that bill adds Section 787.1 to the Insurance Code.

34 (g) This section shall become operative on July 1, 2009.

35 SEC. 17. Section 25247 of the Corporations Code is amended
36 to read:

37 25247. (a) Upon written or oral request, the commissioner
38 shall make available to any person the information specified in
39 Section 6254.12 of the Government Code and made available
40 through the Public Disclosure Program of the Financial Industry

1 Regulatory Authority with respect to any broker-dealer or agent
2 licensed or regulated under this part. The commissioner shall also
3 make available the current license status and the year of issuance
4 of the license of a broker-dealer. Any information disclosed
5 pursuant to this subdivision shall constitute a public record.
6 Notwithstanding any other provisions of law, the commissioner
7 may disclose either orally or in writing that information pursuant
8 to this subdivision. There shall be no liability on the part of and
9 no cause of action of any nature shall arise against the State of
10 California, the Department of Business Oversight, the
11 Commissioner of Business Oversight, or any officer, agent, or
12 employee of the state or of the Department of Business Oversight
13 for the release of any false or unauthorized information, unless the
14 release of that information was done with knowledge and malice.

15 (b) Any broker-dealer or agent licensed or regulated under this
16 part shall upon request deliver a written notice to any client when
17 a new account is opened stating that information about the license
18 status or disciplinary record of a broker-dealer or an agent may be
19 obtained from the Department of Corporations, or from any other
20 source that provides substantially similar information.

21 (c) The notice provided under subdivision (b) shall contain the
22 office location or telephone number where the information may
23 be obtained.

24 (d) A broker-dealer or agent shall be exempt from providing
25 the notice required under subdivision (b) if a person who does not
26 have a financial relationship with the broker-dealer or agent,
27 requests only general operational information such as the nature
28 of the broker-dealer's or agent's business, office location, hours
29 of operation, basic services, and fees, but does not solicit advice
30 regarding investments or other services offered.

31 (e) Upon written or oral request, the commissioner shall make
32 available to any person the disciplinary records maintained on the
33 Investment Adviser Registration Depository and made available
34 through the Investment Advisor Public Disclosure Web site with
35 respect to any investment adviser, investment adviser
36 representative, or associated person of an investment adviser
37 licensed or regulated under this part. The commissioner shall also
38 make available the current license status and the year of issuance
39 of the license of an investment adviser. Any information disclosed
40 pursuant to this subdivision shall constitute a public record.

1 Notwithstanding any other provision of law, the commissioner
2 may disclose that information either orally or in writing pursuant
3 to this subdivision. There shall be no liability on the part of and
4 no cause of action of any nature shall arise against the State of
5 California, the Department of Business Oversight, the
6 Commissioner of Business Oversight, or any officer, agent, or
7 employee of the state or of the Department of Business Oversight
8 for the release of any false or unauthorized information, unless the
9 release of that information was done with knowledge and malice.

10 (f) Section 461 of the Business and Professions Code shall not
11 be applicable to the Department of Corporations when using a
12 national, uniform application adopted or approved for use by the
13 Securities and Exchange Commission, the North American
14 Securities Administrators Association, or the Financial Industry
15 Regulatory Authority that is required for participation in the Central
16 Registration Depository or the Investment Adviser Registration
17 Depository.

18 (g) This section shall not require the disclosure of criminal
19 history record information maintained by the Federal Bureau of
20 Investigation pursuant to Section 534 of Title 28 of the United
21 States Code, and the rules thereunder, or information not otherwise
22 subject to disclosure under the Information Practices Act of 1977.

23 SEC. 18. Section 25254 of the Corporations Code is amended
24 to read:

25 25254. (a) If the commissioner determines it is in the public
26 interest, the commissioner may include in any administrative action
27 brought under this part a claim for ancillary relief, including, but
28 not limited to, a claim for restitution or disgorgement or damages
29 on behalf of the persons injured by the act or practice constituting
30 the subject matter of the action, and the administrative law judge
31 shall have jurisdiction to award additional relief.

32 (b) In an administrative action brought under this part, the
33 commissioner is entitled to recover costs, which in the discretion
34 of the administrative law judge may include an amount representing
35 reasonable attorney's fees and investigative expenses for the
36 services rendered, for deposit into the State Corporations Fund for
37 the use of the Department of Business Oversight.

38 (c) After the exhaustion of the review procedures provided in
39 accordance with the provisions of the Administrative Procedure
40 Act, Chapter 5 (commencing with Section 11500) of Part 1 of

1 Division 3 of Title 2 of the Government Code, the commissioner
2 may apply to the appropriate superior court for a judgment in the
3 amount of the administrative penalty and costs awarded in a final
4 decision and order compelling the respondent, or the named or
5 cited person, to comply with the final decision of the commissioner
6 brought under this division. The application shall include a certified
7 copy of the final decision of the commission and shall constitute
8 a sufficient showing to warrant the issuance of the judgment and
9 order from superior court.

10 SEC. 19. Section 25401 of the Corporations Code is amended
11 to read:

12 25401. It is unlawful for any person to offer or sell a security
13 in this state, or to buy or offer to buy a security in this state, by
14 means of any written or oral communication that includes an untrue
15 statement of a material fact or omits to state a material fact
16 necessary to make the statements made, in the light of the
17 circumstances under which the statements were made, not
18 misleading.

19 SEC. 20. Section 25604 of the Corporations Code is amended
20 to read:

21 25604. The administration and enforcement of, and the
22 education of the public relative to, the laws and programs of the
23 Department of Business Oversight shall be supported from the
24 State Corporations Fund. Funds appropriated from the State
25 Corporations Fund and made available for expenditure for any law
26 or program of the department may come from fees collected from
27 the following:

28 (a) Section 25608, except for fees collected pursuant to
29 subdivisions (o) to (r), inclusive, of Section 25608.

30 (b) Section 25608.1.

31 SEC. 21. Section 25607 of the Corporations Code is amended
32 to read:

33 25607. (a) Neither the commissioner nor any of the
34 commissioner's assistants, clerks, or deputies shall be interested
35 as a director, officer, shareholder, member (other than a member
36 of an organization formed for religious purposes), partner, agent,
37 or employee of any person who, during the period of the official's
38 or employee's association with the Department of Business
39 Oversight, (1) was licensed or applied for license as a broker-dealer

1 or investment adviser under this division, or (2) applied for or
2 secured the qualification of the sale of securities under this division.

3 (b) Nothing contained in subdivision (a) shall prohibit the
4 holding or purchasing of any securities by any assistant, clerk, or
5 deputy in accordance with rules as the commissioner shall adopt
6 for the purpose of protecting the public interest and avoiding
7 conflicts of interest.

8 (c) Nothing contained in subdivision (a) shall prohibit the
9 holding or purchasing of any securities by the commissioner if any
10 of the following criteria is met:

11 (1) The securities held or purchased by the commissioner are
12 exempt from the qualification requirements of Sections 25110,
13 25120, and 25130 by virtue of Section 25100, provided that the
14 holding or purchasing of those securities is in accordance with
15 rules adopted for the purpose of protecting the public interest and
16 avoiding conflicts of interest.

17 (2) The securities held or purchased by the commissioner are
18 not subject to Sections 25110, 25120, and 25130 by virtue of
19 Section 25100.1, provided that the holding or purchasing of those
20 securities is in accordance with rules adopted for the purpose of
21 protecting the public interest and avoiding conflicts of interest.

22 (3) The holding or purchasing of any securities by the
23 commissioner meets each of the following requirements:

24 (A) The securities are held or purchased through a management
25 account or trust administered by a bank or trust company authorized
26 to do business in this state, and the bank or trust company has sole
27 investment discretion regarding the holding, purchase, and sale of
28 securities.

29 (B) The commissioner did not, directly or indirectly, advise,
30 counsel, command, or suggest the holding, purchase, or sale of
31 any security or furnish any information relating to the security to
32 the bank or trust company.

33 (C) The account or trust does not at any time have more than
34 10 percent of its total assets invested in the securities of any one
35 issuer or hold more than 5 percent of the outstanding shares or
36 units of any class of securities of any one issuer.

37 (D) The commissioner shall report to the Attorney General not
38 less often than quarterly all holdings, purchases, and sales of
39 securities by him or her as authorized in paragraph (3), which

1 reports shall be retained by the Attorney General as public
2 documents.

3 SEC. 22. Section 25612.5 of the Corporations Code is amended
4 to read:

5 25612.5. (a) To encourage uniform interpretation and
6 administration of this law and the Franchise Investment Law
7 (Division 5 (commencing with Section 31000)) and effective
8 securities and franchise regulation and enforcement, the
9 commissioner may cooperate with the securities agencies or
10 administrators of one or more states, Canadian provinces or
11 territories, or other countries, the Securities and Exchange
12 Commission, the Commodity Futures Trading Commission, the
13 Securities Investor Protection Corporation, any self-regulatory
14 organization, any national or international organization or securities
15 officials or agencies, and any governmental law enforcement or
16 regulatory agency.

17 (b) The cooperation authorized by subdivision (a) includes, but
18 is not limited to, the following actions:

19 (1) Prescribing rules and forms with a view to achieving
20 maximum uniformity in the form and content of registration
21 statements, applications, and reports wherever practicable.

22 (2) Participating in a nationwide central depository for
23 qualification or registration of securities under this law and for
24 documents or records required or allowed to be maintained under
25 this law.

26 (3) Participating in the Central Registration Depository, or any
27 successor or alternative nationwide or regional depository, for the
28 registering, certifying, or licensing of broker-dealers or agents, or
29 both.

30 (4) Participating in the Investment Adviser Registration
31 Depository, or any successor or alternative nationwide or regional
32 depository, for the registering, certifying, or licensing of investment
33 advisers or investment adviser representatives, or both.

34 (5) Cooperating in any regulatory activity necessary in the
35 administration of the Uniting and Strengthening America by
36 Providing Appropriate Tools Required to Intercept and Obstruct
37 Terrorism Act of 2001 (Public Law 107-56; USA Patriot Act),
38 consistent with state law.

39 (c) Notwithstanding any other provision of law, any application
40 for qualification, amendment to the application or related securities

1 qualification or registration document or notice under Sections
2 25100.1, 25101.1, 25102, 25102.1, 25110, 25120, 25130, and
3 25230.1 or record otherwise required to be signed that is filed in
4 this state as an electronic record pursuant to a nationwide central
5 depository for qualification or registration of securities, or any
6 electronic record filed through the Central Registration Depository
7 or the Investment Adviser Registration Depository, shall be deemed
8 to be a valid original document upon reproduction to paper form
9 by the Department of Business Oversight.

10 (d) For purposes of this section, “electronic record” has the
11 same meaning as in subdivision (g) of Section 1633.2 of the Civil
12 Code.

13 SEC. 23. Section 25614 of the Corporations Code is amended
14 to read:

15 25614. All rules of the commissioner (other than those relating
16 solely to the internal administration of the Department of Business
17 Oversight) shall be made, amended, or rescinded in accordance
18 with the provisions of the Administrative Procedure Act, Chapter
19 4 (commencing with Section 11370) of Part 1 of Division 3 of
20 Title 2 of the Government Code. Rules may be adopted prior to
21 the effective date of this law to become effective upon its effective
22 date.

23 SEC. 24. Section 25702 of the Corporations Code is amended
24 to read:

25 25702. Whenever a person is entitled under this law to a hearing
26 in accordance with the provisions of the Administrative Procedure
27 Act, Chapter 5 (commencing with Section 11500) of Part 1 of
28 Division 3 of Title 2 of the Government Code, a formal hearing
29 before the Department of Business Oversight may be substituted
30 with the consent of such person and of the commissioner for such
31 hearing before an independent hearing officer; and in that case
32 after such hearing before the Department of Business Oversight
33 such person shall not be entitled to any further administrative
34 remedy.

35 SEC. 25. Section 29542 of the Corporations Code is amended
36 to read:

37 29542. (a) If, in the opinion of the commissioner, any person
38 is engaging in any activity in violation of any provision of this
39 law, or rule or order under this law, the commissioner may order
40 the person to desist and refrain from the activity unless and until

1 the activity will not be in violation of any provision of this law or
2 any rule or order under this law.

3 (b) If after an order has been made under subdivision (a), a
4 request for hearing is filed in writing within 30 days of the date of
5 service of the order by the person to whom the order was directed,
6 a hearing shall be held in accordance with the Administrative
7 Procedure Act (Chapter 5 (commencing with Section 11500) of
8 Part 1 of Division 3 of Title 2 of the Government Code), and the
9 commissioner shall have all of the powers granted under the
10 Administrative Procedure Act. Unless the hearing is commenced
11 within 15 business days after the request is filed (or the person
12 affected consents to a later date), the order is rescinded.

13 If that person fails to file a written request for a hearing within
14 30 days from the date of service of the order, the order shall be
15 deemed a final order of the commissioner and shall not be subject
16 to review by any court or agency, notwithstanding Section 29563.

17 SEC. 26. Section 31408 of the Corporations Code is amended
18 to read:

19 31408. (a) If the commissioner determines it is in the public
20 interest, the commissioner may include in any administrative action
21 brought under this division, including a stop order, a claim for
22 ancillary relief, including, but not limited to, a claim for rescission,
23 restitution or disgorgement or damages on behalf of the persons
24 injured by the act or practice constituting the subject matter of the
25 action, and the administrative law judge shall have jurisdiction to
26 award additional relief. The person affected may be required to
27 attend remedial education, as directed by the commissioner.

28 (b) In an administrative action brought under this part the
29 commissioner is entitled to recover costs, which in the discretion
30 of the administrative law judge may include any amount
31 representing reasonable attorney's fees and investigative expenses
32 for the services rendered, for deposit into the State Corporations
33 Fund for the use of the Department of Business Oversight.

34 SEC. 27. Section 31503 of the Corporations Code is amended
35 to read:

36 31503. All rules of the commissioner, other than those relating
37 solely to the internal administration of the Department of Business
38 Oversight, shall be made, amended, or rescinded in accordance
39 with the provisions of Chapter 4.5 (commencing with Section
40 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

1 SEC. 28. Section 31513 of the Corporations Code is amended
2 to read:

3 31513. Whenever a person is entitled under this law to a hearing
4 in accordance with the provisions of Chapter 5 (commencing with
5 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
6 Code, a formal hearing before the Department of Business
7 Oversight may be substituted with the consent of such person and
8 of the commissioner for such hearing before an independent hearing
9 officer; and in that case after such hearing before the Department
10 of Business Oversight such person shall not be entitled to any
11 further administrative remedy.

12 SEC. 29. Section 620 of the Financial Code is amended to read:

13 620. If the licensee whose property and business has been taken
14 pursuant to Section 592 is insured by a Federal Insurance Agency,
15 the commissioner may tender to the appropriate Federal Insurance
16 Agency an appointment as conservator, liquidator, or receiver of
17 the licensee. The commissioner shall determine whether the
18 licensee whose property and business has been taken shall be
19 liquidated or conserved. If the Federal Insurance Agency accepts
20 the appointment, the Federal Insurance Agency shall have, in
21 addition to any powers conferred by applicable federal law, the
22 powers conferred on the commissioner pursuant to this chapter.

23 SEC. 30. Section 622 of the Financial Code is amended to read:

24 622. If the Federal Insurance Agency accepts the appointment
25 in accordance with Section 620, the rights of customers and other
26 creditors of the insured licensee shall be determined in accordance
27 with the applicable provisions of the laws of this state.

28 SEC. 31. The heading of Article 4 (commencing with Section
29 670) of Chapter 7 of Division 1 of the Financial Code is amended
30 to read:

31
32 Article 4. Liquidation of an Uninsured Licensee
33

34 SEC. 32. Section 1008 of the Financial Code is repealed.

35 SEC. 33. Section 1070 of the Financial Code is amended to
36 read:

37 1070. For purposes of this chapter, the following definitions
38 apply:

39 (a) "Automated teller machine" means any electronic
40 information processing device used by a financial institution and

1 its customers for the primary purpose of executing transactions
2 solely between the financial institution and its customers, if the
3 transactions are not incidental to sales between the customer and
4 a business entity other than a financial institution.

5 (b) “Branch office” means any office at which core banking
6 business is conducted other than an automated teller machine, a
7 device used to facilitate check guarantee or check authorization,
8 or a remote service facility as defined in subsection (d) of Section
9 345.12 of Title 12 of the Code of Federal Regulations.

10 (c) “Core banking business” means the business of receiving
11 deposits, paying checks, making loans, and other activities that
12 the commissioner may specify by order or regulation. “Core
13 banking business,” when used to describe the trust business,
14 includes receiving fiduciary assets and administering fiduciary
15 accounts.

16 (d) “Facility,” means an office at which a bank engages in
17 noncore banking business but at which it does not engage in core
18 banking business.

19 (e) “Head office” means the office designated by the bank as
20 its headquarters.

21 (f) “Noncore banking business” means all activities permissible
22 for banks, except core banking business, and except those activities
23 prohibited by law or determined by the commissioner by regulation
24 or order not to be noncore banking business.

25 (g) “Office” means the head office, any branch office, and any
26 facility office of a bank.

27 (h) “Redesignate offices” means (1) the relocation by a bank of
28 its head office to the site of a branch or facility office in this state
29 and the concurrent establishment by the bank of an office at the
30 former site of the head office, or (2) the relocation by a bank of a
31 branch office to the site of a facility office and the concurrent
32 establishment by the bank of a branch or facility office at the
33 former site of the branch office.

34 SEC. 34. Section 2105 of the Financial Code is amended to
35 read:

36 2105. (a) Each licensee or agent shall prominently post on the
37 premises of each branch office that conducts money transmission
38 a notice stating that:

1 “If you have complaints with respect to any aspect of the money
2 transmission activities conducted at this location, you may contact the
3 California Department of Business Oversight at its toll-free telephone
4 number, 1-866-275-2677, by email at consumer.services@dbo.ca.gov, or
5 by mail at the Department of Business Oversight, Consumer Services,
6 1515 K Street, Suite 200, Sacramento, CA 95814.”
7

8 (b) The commissioner may by order or regulation modify the
9 content of the notice required by this section. This notice shall be
10 printed in English and in the same language principally used by
11 the licensee or any agent of the licensee to advertise, solicit, or
12 negotiate either orally or in writing, with respect to money
13 transmission at that branch office. The information required in this
14 notice shall be clear, legible, and in letters not less than one-half
15 inch in height. The notice shall be posted in a conspicuous location
16 in the unobstructed view of the public within the premises. The
17 licensee shall provide to each of its agents the notice required by
18 this section. In those locations operated by an agent, the agent, and
19 not the licensee, shall be responsible for the failure to properly
20 post the required notice.

21 (c) In the event that a licensee or agent conducts money
22 transmission activity via an Internet Web site or a mobile
23 application that is not in a branch office, the commissioner may
24 authorize an alternative form of the notice required in subdivision
25 (a).

26 SEC. 35. Section 4057 of the Financial Code is amended to
27 read:

28 4057. (a) An entity that negligently discloses or shares
29 nonpublic personal information in violation of this division shall
30 be liable, irrespective of the amount of damages suffered by the
31 consumer as a result of that violation, for a civil penalty not to
32 exceed two thousand five hundred dollars (\$2,500) per violation.
33 However, if the disclosure or sharing results in the release of
34 nonpublic personal information of more than one individual, the
35 total civil penalty awarded pursuant to this subdivision shall not
36 exceed five hundred thousand dollars (\$500,000).

37 (b) An entity that knowingly and willfully obtains, discloses,
38 shares, or uses nonpublic personal information in violation of this
39 division shall be liable for a civil penalty not to exceed two
40 thousand five hundred dollars (\$2,500) per individual violation,

1 irrespective of the amount of damages suffered by the consumer
2 as a result of that violation.

3 (c) In determining the penalty to be assessed pursuant to a
4 violation of this division, the court shall take into account the
5 following factors:

6 (1) The total assets and net worth of the violating entity.

7 (2) The nature and seriousness of the violation.

8 (3) The persistence of the violation, including any attempts to
9 correct the situation leading to the violation.

10 (4) The length of time over which the violation occurred.

11 (5) The number of times the entity has violated this division.

12 (6) The harm caused to consumers by the violation.

13 (7) The level of proceeds derived from the violation.

14 (8) The impact of possible penalties on the overall fiscal
15 solvency of the violating entity.

16 (d) In the event a violation of this division results in the identity
17 theft of a consumer, as defined by Section 530.5 of the Penal Code,
18 the civil penalties set forth in this section shall be doubled.

19 (e) The civil penalties provided for in this section shall be
20 exclusively assessed and recovered in a civil action brought in the
21 name of the people of the State of California in any court of
22 competent jurisdiction by any of the following:

23 (1) The Attorney General.

24 (2) The functional regulator with jurisdiction over regulation
25 of the financial institution as follows:

26 (A) In the case of banks, savings associations, credit unions,
27 commercial lending companies, and bank holding companies, by
28 the Department of Business Oversight, Division of Financial
29 Institutions or the appropriate federal authority; (B) in the case of
30 any person engaged in the business of insurance, by the Department
31 of Insurance; (C) in the case of any investment broker or dealer,
32 investment company, investment ~~advisor~~, *adviser*, residential
33 mortgage lender or finance lender, by the Department of Business
34 Oversight, Division of Corporations; and (D) in the case of a
35 financial institution not subject to the jurisdiction of any functional
36 regulator listed under subparagraphs (A) to (C), inclusive, above,
37 by the Attorney General.

38 SEC. 36. Section 12104 of the Financial Code is amended to
39 read:

1 12104. A nonprofit community service organization that meets
2 all of the following criteria shall be exempt from any requirements
3 imposed on proraters pursuant to this division:

4 (a) The nonprofit community service organization incorporates
5 in this state or any other state as a nonprofit corporation and
6 operates pursuant to either the Nonprofit Public Benefit
7 Corporation Law, Part 2 (commencing with Section 5110) of
8 Division 2 of Title 1 of the Corporations Code or the Nonprofit
9 Mutual Benefit Corporation Law, Part 3 (commencing with Section
10 7110) of Division 2 of Title 1 of the Corporations Code.

11 (b) The nonprofit community service organization limits its
12 membership to retailers, lenders in the consumer credit field,
13 educators, attorneys, social service organizations, employer and
14 employee organizations, and related groups that serve educational,
15 benevolent, fraternal, religious, charitable, social, or reformatory
16 purposes.

17 (c) The nonprofit community service organization has as its
18 principal functions the following:

19 (1) Consumer credit education.

20 (2) Counseling on consumer credit problems and family budgets.

21 (3) Arranging or administering debt management plans. "Debt
22 management plan" means a method of paying debtor's obligations
23 in installments on a monthly basis.

24 (4) Arranging or administering debt settlement plans. "Debt
25 settlement plans" means a method of paying debtor's obligations
26 in a negotiated amount to each creditor on a one-time basis.

27 (d) The nonprofit community service organization receives from
28 a debtor no more than the following maximum amounts to offset
29 the organization's actual and necessary expenses for the services
30 described in subdivision (c): a one-time sum not to exceed fifty
31 dollars (\$50) for education and counseling combined in connection
32 with debt management or debt settlement services; and for debt
33 management plans, a sum not to exceed 8 percent of the money
34 disbursed monthly, or thirty-five dollars (\$35) per month,
35 whichever is less, and for debt settlement plans a sum not to exceed
36 15 percent of the amount of the debt forgiven for negotiated debt
37 settlement plans. Nonprofit community service organizations shall
38 not require any upfront payments or deposits on debt settlement
39 plans and may only require payment of fees once the debt has been
40 successfully settled. For purposes of this subdivision, a household

1 shall be considered one debtor. The fees allowed pursuant to this
2 subdivision shall be the only fees that may be charged by a
3 nonprofit community service organization for any services related
4 to a debt management plan or a debt settlement plan.

5 (e) The nonprofit community service organization maintains
6 and keeps current and accurate books, records, and accounts
7 relating to its business in accordance with generally accepted
8 accounting principles, and stores them in a readily accessible place
9 for a period of no less than five years from the end of the fiscal
10 year in which any transactions occurred.

11 (f) The nonprofit community service organization deposits any
12 money received from a debtor for the services described in
13 subdivision (c) in a noninterest-bearing trust account in a federally
14 insured state or federal bank, savings bank, savings and loan
15 association, or credit union, which account is maintained
16 specifically for purposes of administering a debt management plan
17 or debt settlement plan. The nonprofit community service
18 organization shall provide the commissioner the following prior
19 to engaging in business in this state and claiming this exemption:

20 (1) A written notice with the name, address, and telephone
21 number of the bank, savings bank, savings and loan association,
22 or credit union where the trust account is maintained, and the name
23 of the account and the account number. The account information
24 required in this paragraph shall be kept confidential pursuant to
25 the laws governing disclosure of public records, including the
26 California Public Records Act, Chapter 3.5 (commencing with
27 Section 6250) of Division 7 of Title 1 of the Government Code,
28 and the rules adopted thereunder.

29 (2) An irrevocable written consent providing that upon the
30 commissioner taking possession of the property and business of
31 the nonprofit community service organization, all books, records,
32 ~~property~~ *property*, and business, including trust accounts and any
33 other accounts holding debtors' funds, shall be immediately turned
34 over to the commissioner or receiver appointed pursuant to this
35 division. The consent shall be signed by the nonprofit community
36 service organization and the bank, savings bank, savings and loan
37 association, or credit union where the trust account is maintained.
38 The consent shall be binding upon the nonprofit community service
39 organization and the bank, savings bank, savings and loan
40 association, or credit union, and any objection to it must be raised

1 pursuant to the laws of the State of California and only in the forum
2 in which the proceeding to take possession or appointment of the
3 receiver has been filed. The nonprofit community service
4 organization and the bank, savings bank, savings and loan
5 association, or credit union shall further consent to the jurisdiction
6 of the commissioner for the purpose of any investigation or
7 proceeding under Sections 12105 and 12106 or any other provision
8 of this division. The consent required by this paragraph shall
9 include the name, title, and signature of an official of the bank,
10 savings bank, savings and loan association, or credit union holding
11 the authority to consent on behalf of that institution, and the name,
12 title, and signature of the chief executive officer or president of
13 the nonprofit community service organization.

14 (g) The nonprofit community service organization maintains at
15 all times a surety bond in the amount of twenty-five thousand
16 dollars (\$25,000), issued by an insurer licensed in this state. The
17 bond shall be conditioned upon the obligor faithfully conforming
18 to and abiding by the provisions of Section 12104 of the Financial
19 Code, honestly and faithfully applying all funds received, honestly
20 and faithfully performing all obligations and undertakings required
21 under this section, and paying to the state and to any person all
22 money that becomes due and owing to the state or to any person
23 owed by the obligor of the bond.

24 (h) The nonprofit community service organization reports all
25 of the following to the debtor at least once every three months, or
26 upon the debtor's request, for any debt management plan or debt
27 settlement plan:

- 28 (1) Total amount received from the debtor.
29 (2) Total amount paid to each creditor.
30 (3) Total amount any creditor has agreed to accept as payment
31 in full on any debt owed by the debtor.
32 (4) Any amount paid to the organization by the debtor.
33 (5) Any amount held in reserve.
34 (i) The nonprofit community service organization submits to
35 the commissioner, at the organization's expense, an audit report
36 containing audited financial statements covering the calendar year
37 or, if the organization has an established fiscal year, then for that
38 fiscal year, within 120 days after the close of the calendar or fiscal
39 year.

1 (j) The nonprofit community service organization submits with
2 the annual financial statements required under subdivision (i) a
3 declaration that conforms to Section 2015.5 of the Code of Civil
4 Procedure, is executed by an official authorized by the board of
5 the organization, and that states that the organization complies
6 with this section. The annual financial statements shall also include
7 a separate written statement that identifies the name, address,
8 contact person, and telephone number of the organization.

9 (k) The nonprofit community service organization maintains
10 accreditation by an independent accrediting organization, including
11 either the Council on Accreditation or the International Standards
12 Organization, with sector certification.

13 (l) The nonprofit community service organization does not
14 engage in any act or practice in violation of Section 17200 or 17500
15 of the Business and Professions Code.

16 (m) The nonprofit community service organization inserts the
17 following statement, in not less than 10-point type, in its debt
18 management plan and debt settlement plan agreements:
19 “Complaints related to this agreement may be directed to the
20 California Department of Business Oversight. This nonprofit
21 community service organization has adopted best practices for
22 debt management plans and debt settlement plans, and a copy will
23 be provided upon request.”

24 (n) The nonprofit community service organization adopts and
25 implements on a continuous basis policies or procedures of best
26 practices that are designed to prevent improper debt management
27 or debt settlement practices and prevent theft and misappropriation
28 of funds. Failure to do the following shall constitute improper debt
29 management or debt settlement practices, as applicable:

30 (1) Obtain counselor certification conducted by a nationally
31 recognized third-party certification program that certifies that all
32 of the agency’s counselors receive proper training and are qualified
33 to provide financial assistance prior to performing counseling
34 services in this state.

35 (2) Disburse funds no later than 15 days after receipt of valid
36 funds, or by a scheduled disbursement date, whichever is the
37 greater amount of time.

38 (3) Transmit funds utilizing electronic payment processing when
39 available.

1 (4) Implement an inception date policy, which shall include an
2 agreement that a consumer's first disbursement pursuant to a debt
3 management plan shall be received within 90 days of agreeing to
4 the debt management plan service. The debt management plan
5 shall include all items described in subdivision (h) and shall be
6 provided to the consumer at the inception date of the plan. A
7 description of best practices of the agency and of the consumer
8 complaint resources shall be issued no later than the first payment
9 date.

10 (5) Respond to and research any complaint initiated by a
11 consumer within five business days of receipt of the complaint.

12 (6) Prohibit a policy requiring debt management plan consumers
13 from being required to utilize additional ancillary services.

14 (7) Provide consumer access to debt management plan services
15 regardless of the consumer's ability to pay fees related to the debt
16 management plan, lack of creditor participation, or the amount of
17 the consumer's outstanding debt.

18 (8) Implement policies that specifically prohibit credit
19 counselors from receiving financial incentives or additional
20 compensation based on the outcome of the counseling process.

21 (9) Prohibit the practice of paying referral fees to consumers or
22 other third parties who refer new clients to the agency.

23 (10) Disclose in all written contracts with consumers the portion
24 of funding for the agency that is provided by creditors.

25 (11) Disclose in all written contracts for debt management plans
26 or debt settlement plans that these plans are not suitable for all
27 consumers and that consumers may request information on other
28 options, including, but not limited to, bankruptcy.

29 (12) Fully disclose all services to be provided by the agency
30 and any initial and ongoing fees to be charged by the agency for
31 services, including, but not limited to, contributions to the agency.

32 (13) Prohibit the agency or any affiliate of the agency from
33 purchasing debt from a consumer.

34 (14) Prohibit the agency from offering loans to consumers
35 involving the charging of interest.

36 (15) Prominently disclose in written contracts with consumers
37 of any financial arrangement between the agency and any lender
38 or any provider of financial services if the agency receives any
39 form of compensation for referring consumers to that lender or
40 provider of financial services.

1 (16) Provide professional liability insurance coverage.

2 (17) Provide the debtor a written individualized evaluation of
3 his or her financial status and an initial debt management plan for
4 the debtor's debts with specific recommendations regarding actions
5 the debtor should take.

6 (18) Provide the debtor enrolling in a debt management plan a
7 written reliable estimate of the length of time it will take to
8 complete the plan and identifies the total debt owed to each creditor
9 included in the plan, the proposed payment to each creditor, and
10 any fees that would be charged for administering the plan. The
11 estimate shall be provided prior to receipt of the debtor's first
12 deposit.

13 (o) The nonprofit community service organization provides a
14 copy of the best practices described in subdivision (n) to its debtor,
15 upon request.

16 (p) The nonprofit community service organization resolves in
17 a prompt and reasonable manner complaints from debtors relating
18 to the organization's debt management plans or debt settlement
19 plans.

20 (q) The nonprofit community service organization provides
21 written notice to the commissioner within 30 days of dissolution
22 or termination of engaging in the activities of a prorater, as defined
23 in Section 12002.1.

24 (r) This section shall become inoperative upon the enactment
25 of a statute requiring the licensure and regulation of nonprofit
26 community service organizations providing consumer credit
27 counseling.

28 SEC. 37. Section 17210.2 of the Financial Code is amended
29 to read:

30 17210.2. (a) No escrow agent shall disseminate, or cause or
31 permit to be disseminated, in any manner whatsoever, any
32 statement or representation which is false, misleading, or deceptive,
33 or which omits to state material information, or which refers to
34 the supervision of that agent by the State of California or any
35 department or official thereof.

36 (b) A licensed escrow agent, in referring to the corporation's
37 licensure under this law in any written or printed communication
38 or any communication by means of recorded telephone messages
39 or spoken on radio, television, or similar communications media,
40 shall include the following statement: "This escrow company holds

1 California Department of Business Oversight Escrow License No.
2 _____.”

3 (c) The commissioner may order any person to desist from any
4 conduct which the commissioner finds to be a violation of this
5 section.

6 SEC. 38. Section 17214 of the Financial Code is amended to
7 read:

8 17214. (a) There is established in the Department of Business
9 Oversight an Escrow Law Advisory Committee consisting of 11
10 members. The members shall consist of the commissioner or his
11 or her designee; the chairman of the board and the immediate past
12 chairman of the board for the Escrow Agents' Fidelity Corporation;
13 the current chairman of the board and the immediate past chairman
14 of the board for the Escrow Institute of California; a person selected
15 by the commissioner to represent a different type of business
16 ownership under this division; a person selected by the
17 commissioner to represent a different type of business
18 specialization; a person selected by the commissioner to represent
19 small businesses operating pursuant to this division; a person
20 selected by the commissioner to represent medium-sized businesses
21 operating pursuant to this division; an attorney at law experienced
22 in escrow matters selected by the commissioner; and a certified
23 public accountant experienced in the escrow business selected by
24 the commissioner.

25 Except for the members from the Escrow Agents' Fidelity
26 Corporation and the Escrow Institute of California, members
27 appointed by the commissioner shall serve for a term of two years.

28 The committee shall meet at least quarterly. The commissioner
29 or his or her designee shall chair the committee. All members shall
30 serve without compensation or reimbursement for expenses.

31 Where the chairman of the board or the immediate past chairman
32 of the board of the Escrow Agents' Fidelity Corporation is the
33 same person, or is unable to serve on the advisory committee, then
34 the commissioner, after consultation with the board of directors
35 of the Escrow Agents' Fidelity Corporation, shall choose a member
36 of the board of directors to serve on the committee. Where the
37 president or past president of the Escrow Institute of California is
38 the same person, or is unable to serve on the advisory committee,
39 then the commissioner, after consultation with the board of

1 directors of the Escrow Institute of California, shall choose a
2 member of the board of directors to serve on the committee.

3 (b) The purpose of the committee is to assist the commissioner
4 in the implementation of the commissioner's duties under this
5 chapter.

6 SEC. 39. Section 17311 of the Financial Code is amended to
7 read:

8 17311. (a) Persons licensed pursuant to this division shall
9 maintain a corporation under the Nonprofit Mutual Benefit
10 Corporation Law (Part 3 (commencing with Section 7110) of
11 Division 2 of Title 1 of the Corporations Code) operating under
12 the name Escrow Agents' Fidelity Corporation.

13 (b) The State of California, the Department of Business
14 Oversight, or any officer, agent, or employee of either shall not
15 be liable in any way for the conduct of Fidelity Corporation, its
16 directors, officers, agents, employees, or members.

17 SEC. 40. Section 17320 of the Financial Code is amended to
18 read:

19 17320. Fidelity Corporation shall establish and maintain the
20 following funds for payment of claims and for payment of costs
21 of administration: the membership fund, the operations fund, and
22 the fidelity fund.

23 (a) An applicant or a licensee shall, at the time an application
24 is filed for a license, pay to Fidelity Corporation a membership
25 fee of three thousand dollars (\$3,000) for each location for which
26 a license is applied. If the application is denied, withdrawn, or
27 abandoned, Fidelity Corporation may retain two hundred dollars
28 (\$200) from the membership fee to cover costs of administration.

29 (1) The membership fund shall be reserved for payment of
30 claims which exceed the fidelity fund balance and for payment of
31 extraordinary operational costs.

32 (2) Any member who, on the effective date of this section, has
33 an account balance which exceeds the three thousand dollars
34 (\$3,000) membership fee times the number of its licensed locations
35 shall be credited in a special reserve account for the excess amount.
36 This balance shall be credited against future assessments made
37 pursuant to subdivision (b) of Section 17321 in an amount not
38 exceeding four hundred dollars (\$400) per licensed location per
39 year. Any member whose account balance is less than three
40 thousand dollars (\$3,000) times the number of its licensed locations

1 shall, on or before December 1, 1988, pay to Fidelity Corporation
2 an amount sufficient to allow the member's account to be
3 maintained at three thousand dollars (\$3,000) times the number
4 of licensed locations. Fidelity Corporation shall provide each
5 member with an accounting of the amounts being reserved for the
6 members' membership account and amounts being held as a special
7 reserve.

8 (3) The membership fee, less any unpaid assessments and related
9 costs, shall be refunded to the member in accordance with Fidelity
10 Corporation's bylaws not less than 30 months and no more than
11 36 months after the effective date of surrender of a license.

12 (4) Any member who does not engage in any escrow transactions
13 pursuant to subdivision (c) of Section 17312 may terminate its
14 membership in Fidelity Corporation by written notice to Fidelity
15 Corporation and the Department of Business Oversight, as provided
16 in the Fidelity Corporation's bylaws and rules and regulations.
17 The membership fee, less any unpaid assessments and related
18 costs, shall be refunded to the member in accordance with Fidelity
19 Corporation's bylaws not less than 30 months and no more than
20 36 months after the effective date of the member's written request
21 to terminate its membership in Fidelity Corporation. Before a
22 licensee resumes those escrow transactions, it shall first be required
23 to become a member of Fidelity Corporation, as provided in this
24 subdivision.

25 (b) Fidelity Corporation shall prepare, prior to its fiscal year
26 end, an estimated annual operational budget projecting the costs
27 of operations and administration for the succeeding fiscal year,
28 excluding the amount paid for claims and premiums paid for excess
29 coverage bonding. The amount of the assessment shall be 150
30 percent of the budgetary projection. In succeeding years, the
31 assessment shall be adjusted by adding the prior year's deficit or
32 deducting unused surplus from the prior year.

33 (c) Fidelity Corporation shall establish a fidelity fund for the
34 payment of claims and for the payment of the premium for the
35 fidelity bond or insurance policy, if any. All claims shall be paid
36 from the fidelity fund, provided that, to the extent that the fidelity
37 fund balance is not sufficient to pay claims, the claim shall be paid
38 from the membership fund by charging each member's membership
39 account a pro rata share of the excess.

1 (d) All interest earned on the membership fund and the
2 operations fund shall be credited to the fidelity fund.

3 SEC. 41. Section 17331 of the Financial Code is amended to
4 read:

5 17331. (a) An applicant applying for licensure as an escrow
6 agent under this division is required to apply for a Fidelity
7 Corporation Certificate, prepared and issued by Fidelity
8 Corporation, for each proposed shareholder, officer, director,
9 trustee, manager, or employee who is to be directly or indirectly
10 compensated by the escrow agent, prior to licensure of the escrow
11 agent by the commissioner.

12 (b) A shareholder, officer, director, trustee, manager, or
13 employee of an escrow agent, directly or indirectly compensated
14 by an escrow agent within this state, is required to complete and
15 execute a Fidelity Corporation Certificate application, prepared
16 and issued by Fidelity Corporation, as a condition of his or her
17 employment or entitlement to compensation, before the person
18 may continue the regular discharge of his or her duties, or have
19 access to moneys or negotiable securities belonging to or in the
20 possession of the escrow agent, or draw checks upon the escrow
21 agent or the trust funds of the escrow agent.

22 (c) Fidelity Corporation Certificates may also be known as
23 Escrow Agent's Fidelity Corporation Certificates or EAFC
24 Certificates. The certificate at all times remains the property of
25 Fidelity Corporation, and is not transferable by either a member
26 or employee. The certificate is not a warranty or guarantee by
27 Fidelity Corporation of the integrity, veracity, or competence of
28 the person.

29 (d) An application for a Fidelity Corporation Certificate shall
30 be in writing and in the form prescribed by Fidelity Corporation.
31 The application may include (1) a fee not to exceed fifty dollars
32 (\$50), (2) two passport-size photographs, and (3) a set of fingerprint
33 images and related information using the process established by
34 the Department of Justice for requesting state summary criminal
35 history information, plus the fee charged by the Department of
36 Justice for processing noncriminal applicant fingerprint images
37 and related information, in a manner established by the Department
38 of Justice pursuant to subdivision (l). The Department of Justice
39 shall honor the Fidelity Corporation report request form and issue
40 a report to Fidelity Corporation, notwithstanding any other

1 provision of law or regulation to the contrary. Fidelity Corporation
2 is also entitled to submit a set of fingerprint images and related
3 information in the Department of Justice specified noncriminal
4 applicant fingerprint format for the purpose of requesting and
5 obtaining a report from the Department of Justice, for the officers
6 and employees of Fidelity Corporation. A member shall cause the
7 filing of applications for all existing employees as required by this
8 section within 30 days of written notice by Fidelity Corporation
9 to the member.

10 (e) The application form shall include a provision for binding
11 arbitration to allow for arbitration of any appeal or dispute as to a
12 decision by Fidelity Corporation concerning the certificate, as
13 follows:

14 A DISPUTE AS TO WHETHER THE DENIAL OF THIS
15 CERTIFICATE APPLICATION OR ANY SUBSEQUENT
16 SUSPENSION OR REVOCATION OF THE CERTIFICATE IS
17 UNNECESSARY OR UNAUTHORIZED OR WAS
18 IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY
19 RENDERED, MAY BE DETERMINED BY SUBMISSION TO
20 ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND
21 NOT BY A LAWSUIT OR RESORT TO COURT PROCESS
22 EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL
23 REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT
24 AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL
25 CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT,
26 SUBMIT ANY ISSUE ARISING FROM A DECISION BY
27 FIDELITY CORPORATION TO DENY THIS CERTIFICATE
28 APPLICATION OR TO SUSPEND OR REVOKE THE
29 CERTIFICATE TO BE DECIDED BY BINDING NEUTRAL
30 ARBITRATION. UPON AN AGREEMENT TO SUBMIT TO
31 BINDING NEUTRAL ARBITRATION, THE APPLICANT HAS
32 NO RIGHT TO HAVE ANY DISPUTE CONCERNING THIS
33 CERTIFICATE APPLICATION LITIGATED IN A COURT OR
34 JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY
35 AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN
36 THE ESCROW LAW. ARBITRATION MAY BE COMPELLED
37 AS PROVIDED BY LAW.

38 (f) There is no liability on the part of and no cause of action of
39 any nature may arise against Fidelity Corporation or its members,
40 directors, officers, employees, or agents, the State of California,

1 the Department of Business Oversight, or any officer, agent, or
2 employee of the state or the Department of Business Oversight for
3 statements made by Fidelity Corporation in reports or
4 recommendations made pursuant to this division, or for reports or
5 recommendations made pursuant to this division to Fidelity
6 Corporation by its members, directors, officers, employees, or
7 agents, the State of California, the Department of Business
8 Oversight, or any officer, agent, or employee of the state or the
9 Department of Business Oversight, unless the information provided
10 is false and the party making the statement or providing the false
11 information does so with knowledge and malice. Reports or
12 recommendations made pursuant to this section, or Section
13 17331.1, 17331.2, or 17331.3, are not public documents.

14 (g) There is no liability on the part of and no cause of action of
15 any nature may arise against Fidelity Corporation or its members,
16 directors, officers, employees, or agents, the State of California,
17 the Department of Business Oversight, or an officer, agent, or
18 employee of the state or the Department of Business Oversight for
19 the release of any information furnished to Fidelity Corporation
20 pursuant to this section unless the information released is false and
21 the party, including Fidelity Corporation, its members, directors,
22 officers, employees, or agents, the state, the Department of
23 Business Oversight, or any officer, agent, or employee of the state
24 or the Department of Business Oversight, who releases the false
25 information does so with knowledge and malice.

26 (h) There is no liability on the part of and no cause of action of
27 any nature may arise against Fidelity Corporation or its directors,
28 officers, employees, or agents, for any decision to deny an
29 application for a certificate or to suspend or revoke the certificate
30 of any person or for the timing of any decision or the timing of
31 any notice to persons or members thereof, or for any failure to
32 deny an application under subdivision (a) of Section 17331.2. This
33 subdivision does not apply to acts performed in bad faith or with
34 malice.

35 (i) Fidelity Corporation, any member of Fidelity Corporation,
36 an agent of Fidelity Corporation or of its members, or any person
37 who uses any information obtained under this section for any
38 purpose not authorized by this chapter is guilty of a misdemeanor.

39 (j) Section 17331, 17331.1, or 17331.2 does not constitute a
40 restriction or limitation upon the obligation of Fidelity Corporation

1 to indemnify members against loss, as provided in Sections 17310
2 and 17314. The failure to obtain a certificate, the denial of an
3 application for a certificate, or the suspension, cancellation, or
4 revocation of a certificate does not limit the obligation of Fidelity
5 Corporation to indemnify a member against loss.

6 (k) Notwithstanding Section 11105 of the Penal Code, Fidelity
7 Corporation is entitled to receive state summary criminal history
8 information and subsequent arrest notification from the Department
9 of Justice as a result of fingerprint images and related information
10 submitted to the Department of Justice by the Department of
11 Business Oversight, pursuant to subdivision (g) of Section 17209,
12 Section 17212.1, and subdivision (d) of Section 17414.1, by or on
13 behalf of escrow agents, shareholders, officers, directors, trustees,
14 managers, or employees of an escrow agent, directly or indirectly
15 compensated by an escrow agent. The Department of Justice and
16 Fidelity Corporation shall enter into an agreement to implement
17 this subdivision. The Department of Business Oversight shall
18 forward to Fidelity Corporation, weekly, a list of names of
19 individual fingerprints submitted to the Department of Justice.

20 (l) (1) The fingerprint images and related information required
21 pursuant to subdivision (d) shall be submitted by the Department
22 of Business Oversight to the Department of Justice, in a manner
23 established by the Department of Justice, for the purposes of
24 obtaining information as to the existence and content of a record
25 of state or federal convictions, state or federal arrests, and
26 information as to the existence of and content of a record of state
27 or federal arrests for which the Department of Justice establishes
28 that the person is free on bail or on his or her own recognizance
29 pending trial or appeal.

30 (2) Upon receipt, the Department of Justice shall forward to the
31 Federal Bureau of Investigation requests for federal summary
32 criminal history information received pursuant to this section. The
33 Department of Justice shall review the information returned from
34 the Federal Bureau of Investigation and compile and disseminate
35 a response to the Department of Business Oversight and a fitness
36 determination to Fidelity Corporation pursuant to subdivision (p)
37 of Section 11105 of the Penal Code.

38 (3) The Department of Justice shall charge a fee sufficient to
39 cover the costs of processing the requests pursuant to this
40 subdivision.

SEC. 42. Section 18405 of the Financial Code is amended to read:

18405. (a) On or before the 15th day of March of every year, each industrial loan company shall file with the commissioner an audit report containing audited financial statements together with such other relevant information as the commissioner may require relating to the company and to each place of business of the company. The audited financial statements shall include a balance sheet of the company prepared as of the last day of the preceding calendar year and statements of income and of surplus for such calendar year.

(b) The reports and financial statements referred to in subdivision (a) shall be prepared in accordance with generally accepted accounting principles and shall be accompanied by a report, certificate, or opinion of an independent certified public accountant or independent public accountant, and shall contain such relevant information as the commissioner may require. The audits shall be conducted in accordance with generally accepted auditing standards and the rules and regulations of the commissioner.

(c) For good cause and upon written request, the commissioner may extend the time for compliance with subdivision (a).

(d) If the report, certificate, or opinion of the independent accountant referred to in subdivision (b) hereof is in any way qualified, the commissioner may require the company to take such action as he *or she* deems appropriate to permit an independent accountant to remove such qualification from the report, certificate, or opinion.

(e) The commissioner may reject any financial statement, report, certificate, or opinion filed pursuant to this section by notifying the company required to make such filing of its rejection and the cause thereof. Within 30 days after the receipt of such notice, the company shall correct such deficiency, and the failure so to do shall be deemed a violation of this division. The commissioner shall retain a copy of all filings so rejected.

SEC. 43. Section 22105.1 of the Financial Code is amended to read:

22105.1. (a) An applicant for a mortgage loan originator license shall apply by submitting the uniform form prescribed for such purpose by the Nationwide Mortgage Licensing System and

1 Registry. The commissioner may require the submission of
2 additional information or supporting documentation to the
3 department.

4 (b) Section 461 of the Business and Professions Code shall not
5 be applicable to the Department of Business Oversight when using
6 a national uniform application adopted or approved for use by the
7 Nationwide Mortgage Licensing System and Registry in connection
8 with the SAFE Act.

9 (c) In connection with an application for a license as a mortgage
10 loan originator, the applicant shall, at a minimum, furnish to the
11 Nationwide Mortgage Licensing System and Registry information
12 concerning the applicant's identity, including the following:

13 (1) Fingerprint images and related information, for purposes of
14 performing a federal, or both a state and federal, criminal history
15 background check.

16 (2) Personal history and experience in a form prescribed by the
17 Nationwide Mortgage Licensing System and Registry, including
18 the submission of authorization for the Nationwide Mortgage
19 Licensing System and Registry and the commissioner to obtain
20 both of the following:

21 (A) An independent credit report obtained from a consumer
22 reporting agency.

23 (B) Information related to any administrative, civil, or criminal
24 findings by any governmental jurisdiction.

25 (d) The commissioner may ask the Nationwide Mortgage
26 Licensing System and Registry to obtain state criminal history
27 background check information on applicants described in
28 subdivision (a) using the procedures set forth in subdivisions (e)
29 and (f).

30 (e) If the Nationwide Mortgage Licensing System and Registry
31 electronically submits fingerprint images and related information,
32 as required by the Department of Justice, for an applicant for a
33 mortgage loan originator license, for the purposes of obtaining
34 information as to the existence and content of a record of state
35 convictions and state arrests and to the existence and content of a
36 record of state arrests for which the Department of Justice
37 establishes that the person is free on bail or on his or her
38 recognizance pending trial or appeal, the Department of Justice
39 shall provide an electronic response to the Nationwide Mortgage
40 Licensing System and Registry pursuant to paragraph (1) of

1 subdivision (p) of Section 11105 of the Penal Code, and shall
2 provide the same electronic response to the commissioner.

3 (f) The Nationwide Mortgage Licensing System and Registry
4 may request from the Department of Justice subsequent arrest
5 notification service, as provided pursuant to Section 11105.2 of
6 the Penal Code, for persons described in subdivision (a). The
7 Department of Justice shall provide the same electronic response
8 to the commissioner.

9 (g) The Department of Justice shall charge a fee sufficient to
10 cover the cost of processing the requests described in this section.

11 SEC. 44. Section 22159.5 of the Financial Code is amended
12 to read:

13 22159.5. (a) The commissioner may, as he or she deems
14 necessary, require licensees to provide reports concerning their
15 residential mortgage loan servicing activities, including, but not
16 limited to, information similar to that collected in connection with
17 the Mortgage Servicers Survey, first published by the Department
18 of Business Oversight in December 2007. The commissioner is
19 additionally authorized to seek and accept information provided
20 on a voluntary basis by residential mortgage loan servicers not
21 subject to the commissioner's jurisdiction. The commissioner shall
22 post only aggregated survey results on the department's Internet
23 Web site, and shall note the number of loan servicers submitting
24 data included in the aggregated totals and the estimated percentage
25 of outstanding mortgage loans to Californians that are serviced by
26 these loan servicers, to the extent information on the number of
27 outstanding loans is available from a reliable source. Nothing in
28 this section is intended to reduce or change the commissioner's
29 authority to request and demand reports under Sections 22150 and
30 22159.

31 (b) For purposes of this section, "mortgage loan servicing
32 activity" means receiving more than three installment payments
33 of principal, interest, or other amounts placed in escrow, pursuant
34 to the terms of a mortgage loan, and performing services relating
35 to that receipt or the enforcement of its receipt, on behalf of the
36 holder of the note evidencing that loan.

37 SEC. 45. Section 22160 of the Financial Code is amended to
38 read:

39 22160. The commissioner shall make and file annually with
40 the Department of Business Oversight as a public record a

1 composite of the annual reports and any comments on the reports
2 that he or she deems to be in the public interest.

3 SEC. 46. Section 22756 of the Financial Code is amended to
4 read:

5 22756. Notwithstanding any other law, any application for
6 licensure, amendment to the application or registration document
7 or notice filed under any of the laws administered by the
8 Department of Business Oversight, or record otherwise required
9 to be filed in this state as an electronic record pursuant to a
10 nationwide central depository for information regarding licensees,
11 including mortgage loan originators, or any electronic record filed
12 through the Nationwide Mortgage Licensing System and Registry,
13 shall be deemed to be a valid original document upon reproduction
14 to paper form by the Department of Business Oversight.

15 SEC. 47. Section 23070 of the Financial Code is amended to
16 read:

17 23070. (a) The Legislature finds and declares that it is in the
18 public interest for the administration and enforcement of this
19 division to be undertaken by the Department of Business Oversight.

20 (b) It is therefore the intent of the Legislature to transfer the
21 existing responsibilities relating to administration and enforcement
22 of check cashers that engage in activities subject to this division
23 from the Department of Justice to the Department of Business
24 Oversight.

25 SEC. 48. Section 23071 of the Financial Code is amended to
26 read:

27 23071. The Commissioner of Business Oversight and the
28 Department of Business Oversight shall succeed to, and are vested
29 with, all duties, powers, purposes, responsibilities, and jurisdiction
30 of the Department of Justice as they relate to check cashers who
31 engage in the activities subject to this division.

32 SEC. 49. Section 23072 of the Financial Code is amended to
33 read:

34 23072. The Department of Business Oversight may use the
35 unexpended balance of funds available for use in connection with
36 the performance of duties of the Department of Justice to which
37 the Department of Business Oversight succeeds pursuant to Section
38 23071.

39 SEC. 50. Section 23073 of the Financial Code is amended to
40 read:

1 23073. All officers and employees of the Department of Justice
2 who, on the operative date of this division, are performing any
3 duty, power, purpose, responsibility, or jurisdiction to which the
4 Department of Business Oversight succeeds, and who are serving
5 in the civil service, other than as temporary employees or persons
6 in positions exempted from civil service, shall be transferred to
7 the Department of Business Oversight. The status, position, and
8 rights of those persons shall not be affected by the transfer and
9 shall be retained by those persons as officers and employees of
10 the Department of Business Oversight, pursuant to Part 2
11 (commencing with Section 18500) of Division 5 of Title 2 of the
12 Government Code.

13 SEC. 51. Section 23074 of the Financial Code is amended to
14 read:

15 23074. The Department of Business Oversight shall have
16 possession and control of all records, criminal history information,
17 papers, equipment, supplies, moneys, funds, appropriations,
18 licenses, permits, contracts, claims, judgments, land, and other
19 property, real or personal, connected with the administration of,
20 or held for the benefit or use of, the Department of Justice for the
21 performance of the functions transferred to the Department of
22 Business Oversight pursuant to Section 23071.

23 SEC. 52. Section 23102 of the Financial Code is amended to
24 read:

25 23102. The deferred deposits made pursuant to a permit issued
26 under Section 1789.37 of the Civil Code prior to December 31,
27 2004, shall be subject to and enforced to the extent valid under
28 Sections 1789.30 to 1789.37, inclusive, of the Civil Code, as if
29 those sections were not repealed. Any regulation, order, or other
30 action adopted, prescribed, taken, or performed by the Department
31 of Justice or by an officer of that department in connection with
32 deferred deposit transactions made prior to December 31, 2004,
33 shall continue to apply to those transactions. No suit, action, or
34 other proceeding lawfully commenced by or against the Department
35 of Justice or any other officer of the state in relation to deferred
36 deposit transactions made prior to December 31, 2004, shall abate
37 by reason of the transfer of authority concerning deferred deposit
38 transactions to the Department of Business Oversight pursuant to
39 Section 23071.

1 SEC. 53. Section 30217 of the Financial Code is amended to
2 read:

3 30217. The commissioner may from time to time make, amend,
4 and rescind such rules, forms, and orders as are necessary to carry
5 out the provisions of this law, including rules defining any terms,
6 whether or not used in this law, insofar as the definitions are not
7 inconsistent with the provisions of this law. For the purposes of
8 rules and forms, the commissioner may classify persons and matters
9 within his jurisdiction and may prescribe different requirements
10 for different classes. The commissioner may in his discretion waive
11 any requirement of any rule or form in situations where in his
12 opinion such requirement is not necessary in the public interest or
13 for the protection of investors. All rules of the commissioner other
14 than those relating solely to the internal administration of the
15 Department of Business Oversight shall be made, amended, or
16 rescinded in accordance with the provisions of Chapter 4.5
17 (commencing with Section 11371) of Part 1 of Division 3 of Title
18 2 of the Government Code.

19 SEC. 54. Section 50140 of the Financial Code is amended to
20 read:

21 50140. (a) An applicant for a license as a mortgage loan
22 originator shall apply by submitting the uniform form prescribed
23 for that purpose by the Nationwide Mortgage Licensing System
24 and Registry. The commissioner may require the submission of
25 additional information or supporting documentation to the
26 department.

27 (b) Section 461 of the Business and Professions Code shall not
28 be applicable to the Department of Business Oversight when using
29 a national uniform application adopted or approved for use by the
30 Nationwide Mortgage Licensing System and Registry in connection
31 with the SAFE Act.

32 (c) The commissioner shall, by rule, establish the timelines,
33 fees, and assessments applicable to applicants for original mortgage
34 loan originator licenses, license renewals, and license changes
35 under this division.

36 (d) The commissioner may, by rule, require mortgage loan
37 originator licensees to pay assessments through the Nationwide
38 Mortgage Licensing System and Registry.

39 (e) In connection with an application for a license as a mortgage
40 loan originator, the applicant shall, at a minimum, furnish to the

1 Nationwide Mortgage Licensing System and Registry information
2 concerning the applicant's identity, including the following:

3 (1) Fingerprint images and related information, for purposes of
4 performing a federal, or both a state and federal, criminal history
5 background check.

6 (2) Personal history and experience in a form prescribed by the
7 Nationwide Mortgage Licensing System and Registry, including
8 the submission of authorization for the Nationwide Mortgage
9 Licensing System and Registry and the commissioner to obtain
10 both of the following:

11 (A) An independent credit report obtained from a consumer
12 reporting agency.

13 (B) Information related to any administrative, civil, or criminal
14 findings by any governmental jurisdiction.

15 (f) The commissioner may ask the Nationwide Mortgage
16 Licensing System and Registry to obtain state criminal history
17 background check information on applicants described in
18 subdivision (a) using the procedures set forth in subdivisions (g)
19 and (h).

20 (g) If the Nationwide Mortgage Licensing System and Registry
21 electronically submits fingerprint images and related information,
22 as required by the Department of Justice, for an applicant for a
23 mortgage loan originator license, for the purposes of obtaining
24 information as to the existence and content of a record of state
25 convictions and state arrests and to the existence and content of a
26 record of state arrests for which the Department of Justice
27 establishes that the person is free on bail or on his or her
28 recognizance pending trial or appeal, the Department of Justice
29 shall provide an electronic response to the Nationwide Mortgage
30 Licensing System and Registry pursuant to paragraph (1) of
31 subdivision (p) of Section 11105 of the Penal Code, and shall
32 provide the same electronic response to the commissioner.

33 (h) The Nationwide Mortgage Licensing System and Registry
34 may request from the Department of Justice subsequent arrest
35 notification service, as provided pursuant to Section 11105.2 of
36 the Penal Code, for persons described in subdivision (a). The
37 Department of Justice shall provide the same electronic response
38 to the commissioner.

39 (i) The Department of Justice shall charge a fee sufficient to
40 cover the cost of processing the requests described in this section.

1 SEC. 55. Section 50303 of the Financial Code is amended to
2 read:

3 50303. Neither the commissioner nor any employee of the
4 Department of Business Oversight shall be precluded from
5 obtaining a residential mortgage loan from a lender licensed under
6 this division, subject to the rules that may be adopted hereunder
7 or pursuant to other proper authority.

8 SEC. 56. Section 50307.1 of the Financial Code is amended
9 to read:

10 50307.1. The commissioner may, as he or she deems necessary,
11 require licensees to provide reports concerning their residential
12 mortgage loan servicing activities, including, but not limited to,
13 information similar to that collected in connection with the
14 Mortgage Servicers Survey, first published by the Department of
15 Business Oversight in December 2007. The commissioner is
16 additionally authorized to seek and accept information provided
17 on a voluntary basis by residential mortgage loan servicers not
18 subject to the commissioner's jurisdiction. The commissioner shall
19 post only aggregated survey results on the department's Internet
20 Web site, and shall note the number of loan servicers submitting
21 data included in the aggregated totals and the estimated percentage
22 of outstanding mortgage loans to Californians that are serviced by
23 these loan servicers, to the extent information on the number of
24 outstanding loans is available from a reliable source. Nothing in
25 this section is intended to reduce or change the commissioner's
26 authority to request and demand reports under Section 50307.

27 SEC. 57. Section 50316.5 of the Financial Code is amended
28 to read:

29 50316.5. Notwithstanding any other law, any application for
30 licensure, amendment to the application or registration document
31 or notice filed under any of the laws administered by the
32 Department of Business Oversight, or record otherwise required
33 to be filed in this state as an electronic record pursuant to a
34 nationwide central depository for information regarding licensees,
35 including mortgage loan originators, or any electronic record filed
36 through the Nationwide Mortgage Licensing System and Registry,
37 shall be deemed to be a valid original document upon reproduction
38 to paper form by the Department of Business Oversight.

39 SEC. 58. Section 5970 of the Government Code is amended
40 to read:

1 5970. As used in this chapter, the following phrases have the
2 following meanings:

3 (a) “Person” means any broker, dealer, municipal securities
4 dealer, investment advisor, or investment firm.

5 (b) “Regulatory agency” means the Department of Business
6 Oversight, the securities administrators or other similar regulatory
7 authority in any other state, the Securities and Exchange
8 Commission, ~~the National Association of Securities Dealers,~~
9 *Financial Industry Regulatory Authority*, the Municipal Securities
10 Rulemaking Board, the Commodity Futures Trading Commission,
11 or any other self-regulatory organization.

12 (c) “State or local government” means the state, any department,
13 agency, board, commission, or authority of the state, or any city,
14 city and county, county, public district, public corporation,
15 authority, agency, board, commission, or other public entity.

16 SEC. 59. Section 6254.5 of the Government Code is amended
17 to read:

18 6254.5. Notwithstanding any other provisions of law, whenever
19 a state or local agency discloses a public record which is otherwise
20 exempt from this chapter, to any member of the public, this
21 disclosure shall constitute a waiver of the exemptions specified in
22 Section 6254, 6254.7, or other similar provisions of law. For
23 purposes of this section, “agency” includes a member, agent,
24 officer, or employee of the agency acting within the scope of his
25 or her membership, agency, office, or employment.

26 This section, however, shall not apply to disclosures:

27 (a) Made pursuant to the Information Practices Act (commencing
28 with Section 1798 of the Civil Code) or discovery proceedings.

29 (b) Made through other legal proceedings or as otherwise
30 required by law.

31 (c) Within the scope of disclosure of a statute which limits
32 disclosure of specified writings to certain purposes.

33 (d) Not required by law, and prohibited by formal action of an
34 elected legislative body of the local agency which retains the
35 writings.

36 (e) Made to any governmental agency which agrees to treat the
37 disclosed material as confidential. Only persons authorized in
38 writing by the person in charge of the agency shall be permitted
39 to obtain the information. Any information obtained by the agency

1 shall only be used for purposes which are consistent with existing
2 law.

3 (f) Of records relating to a financial institution or an affiliate
4 thereof, if the disclosures are made to the financial institution or
5 affiliate by a state agency responsible for the regulation or
6 supervision of the financial institution or affiliate.

7 (g) Of records relating to any person that is subject to the
8 jurisdiction of the Department of Business Oversight, if the
9 disclosures are made to the person that is the subject of the records
10 for the purpose of corrective action by that person, ~~or~~ or, if a
11 corporation, to an officer, director, or other key personnel of the
12 corporation for the purpose of corrective action, or to any other
13 person to the extent necessary to obtain information from that
14 person for the purpose of an investigation by the Department of
15 Business Oversight.

16 (h) Made by the Commissioner of Business Oversight under
17 Section 450, 452, 8009, or 18396 of the Financial Code.

18 (i) Of records relating to any person that is subject to the
19 jurisdiction of the Department of Managed Health Care, if the
20 disclosures are made to the person that is the subject of the records
21 for the purpose of corrective action by that person, ~~or~~ or, if a
22 corporation, to an officer, director, or other key personnel of the
23 corporation for the purpose of corrective action, or to any other
24 person to the extent necessary to obtain information from that
25 person for the purpose of an investigation by the Department of
26 Managed Health Care.

27 SEC. 60. Section 6254.12 of the Government Code is amended
28 to read:

29 6254.12. Any information reported to the North American
30 Securities Administrators ~~Association/National Association of~~
31 ~~Securities Dealers' Central Registration Depository~~
32 ~~Association/Financial Industry Regulatory Authority~~ and compiled
33 as disciplinary records which are made available to the Department
34 of Business Oversight through a computer system, shall constitute
35 a public record. Notwithstanding any other provision of law, the
36 Department of Business Oversight may disclose that information
37 and the current license status and the year of issuance of the license
38 of a broker-dealer upon written or oral request pursuant to Section
39 25247 of the Corporations Code.

SEC. 61. Section 6254.22 of the Government Code is amended to read:

6254.22. Nothing in this chapter or any other provision of law shall require the disclosure of records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption. The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of ~~Business Oversight~~ *Managed Health Care* in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

SEC. 62. Section 11840 of the Government Code is amended to read:

11840. The Legislature finds and declares all of the following:

(a) The current regulatory responsibility for medical services is spread among many governmental entities including all of the following:

(1) The Medical Board of California.

(2) The Department of ~~Business Oversight~~ *Managed Health Care*.

(3) The State Department of Health Care Services.

(b) This overlapping jurisdiction has resulted in multiple and duplicative audits of many physician offices, additional expense and hiring of additional staff to respond to duplicate requests for

1 medical records, and the review of confidential medical records
2 by a growing number of governmental entities.

3 (c) In the interest of reducing the number of separate times
4 various public and private agencies review confidential medical
5 records, streamlining the regulatory process, and reducing the
6 redundant reviews of the offices of physicians, it is the intent of
7 the Legislature to coordinate, to the extent feasible, as many of
8 these regulatory functions as possible.

9 (d) In addition to government audits of physician offices,
10 numerous private entities also conduct reviews of physician offices.

11 (e) It is in the public interest to achieve ultimately a uniform
12 system of private and public auditing of physician offices and,
13 thus, streamline the process as much as possible.

14 SEC. 63. Section 53344.1 of the Government Code is amended
15 to read:

16 53344.1. (a) The legislative body may provide in the resolution
17 of intention or the resolution of consideration, and in documents
18 setting forth the rights of the debtholders that it shall reserve to
19 itself, the right and authority to allow any interested owner of
20 property within the district, subject to the provisions of this section
21 and to those conditions as it may impose, and any applicable
22 prepayment penalties as prescribed in the bond indenture or
23 comparable instrument or document, to tender to the district
24 treasurer in full payment or part payment of any installment of the
25 special taxes or the interest or penalties thereon which may be due
26 or delinquent, but for which a bill has been received, any bond or
27 other obligation secured thereby, the bond or other obligation to
28 be taken at par and credit to be given for the accrued interest shown
29 thereby computed to the date of tender. The district treasurer shall
30 thereupon cancel the bond debt and shall cause proper credit
31 therefor to be entered on the records of the district and in the office
32 of the auditor and tax collector. If the legislative body agrees to
33 allow bond tenders pursuant to this section or to Section 53356.8,
34 the legislative body may, at its discretion, agree to distribute or
35 direct its trustee or other agent to distribute by any means an offer
36 to purchase bonds or other related inquiry to the holders of the
37 bonds of the district, at the expense of the person requesting the
38 mailing. Neither the legislative body, nor any of its officers, agents,
39 or trustees shall be liable in any way for that distribution.

(b) The provisions of this subdivision apply to any tender of bonds pursuant to this section by an owner of property within the district who is delinquent in paying special taxes levied by this district when due. Bonds may be tendered pursuant to this subdivision only after all of the following conditions have been satisfied:

(1) The delinquent lot or parcel has been offered for sale as a result of a foreclosure judgment and the minimum price required to be paid for the lot or parcel was not received.

(2) The bonds to be tendered to the district were obtained by the property owner only after their prior owner was presented with a tender offer or solicitation as defined in this subdivision.

(A) For purposes of this subdivision, a “tender offer” or “solicitation” is a solicitation by any person or that person’s agent by offering circular, memoranda, tender, or solicitation, or any other document or written, oral, or electronic communication for the purchase of the bonds from their then current owner. A person includes a natural person, corporation, company, partnership, limited liability company, limited liability partnership, association, or any other entity and a “tendering party” includes any person making a tender offer for bonds.

(B) Any tender offer or solicitation shall include all material information as required under federal and state securities laws and shall also include the following information, to the extent applicable:

(i) The name of the tendering party.

(ii) An individual who can be contacted to provide further information with respect to the tender.

(iii) The current holdings of bonds of the district by the tendering party and its affiliates.

(iv) The total face amount of the bonds being solicited.

(v) The price or method of determining the price per one thousand dollars (\$1,000) in bonds being offered by the tendering party.

(vi) Whether the tendering party or any person affiliated with or related to the tendering party, or any employee, agent, or representative of the tendering party, is a property owner within the district that issued the bonds.

(vii) Whether the present intentions of the tendering party are to use the bonds for payment of special taxes or the purchase of

1 property at a foreclosure sale pursuant to this section or Section
2 53356.8. This statement of present intentions shall not be construed
3 to be binding on the tendering party.

4 (viii) The status of the bond redemption fund, construction fund,
5 reserve fund, and any other funds of the district, and the special
6 tax delinquency rate of the district, all of which data shall be the
7 most recent available from the district and, in any event, shall
8 apply to the state of the funds after the most recent payment of
9 principal and interest on the bonds. The district shall provide the
10 necessary data to the property owner within 10 days of receiving
11 a written request and may charge a reasonable fee not to exceed
12 its actual costs of providing the data. The district shall
13 simultaneously release the same information to the general public.
14 The property shall also provide the percentage of the delinquency
15 attributable to the tendering party or any person affiliated with or
16 related to the tendering party, or any employee, agent, or
17 representative of the tendering party, for each of the three most
18 recent fiscal years.

19 (ix) If the tendering party owns or leases property in the district
20 that issued the bonds, the development plans for that property and
21 an update on the current status of development of that property
22 and of any zoning, planning, or other permits or approvals needed
23 for development of the property to proceed.

24 (x) Any other material information available to the tendering
25 party and not generally available to the public that would
26 significantly affect the market value of the bonds of the district.

27 (C) The tendering party shall notify the legislative body of his
28 or her intent to make a tender offer or solicitation at least
29 simultaneously with making any offer or solicitation.

30 (D) The tendering party shall provide a copy of the solicitation
31 to the Department of Business Oversight prior to five working
32 days after notifying the legislative body pursuant to subparagraph
33 (C).

34 (3) The tendering property owner provides the legislative body
35 with a negative assurance from counsel representing the property
36 owner that no misleading or other information has come to the
37 opining party's attention after reasonable investigation, that would
38 lead the party providing the negative assurance to believe that the
39 tender was in violation of federal or state securities laws.

1 (4) The tendering property owner delivers to the legislative body
2 of the district that issued the bonds subject to the tender, a
3 certificate to the effect that the tender information is accurate in
4 all material respects and does not omit to state a material fact
5 necessary in order to make the statements included in the tender
6 information not misleading, except that the certificate need not
7 provide any assurances as to the accuracy of the information as to
8 the bond fund balances and tax payment information provided by
9 the district.

10 (c) The provisions of this subdivision apply to any tender of
11 bonds pursuant to this section by any owner of property within the
12 district who is not delinquent in paying special taxes on any
13 property within the district. A person subject to this subdivision
14 shall be deemed to be a person whose relationship to the issuer
15 may give him or her access, directly or indirectly, to material
16 information about the issuer not generally available to the public,
17 and the provisions of Section 25402 of the Corporations Code
18 apply to any purchase or sale of securities by that person in
19 connection with the tender transaction. For purposes of this
20 subdivision, the “issuer” includes the district, the local agency that
21 created the district, and any owner of property within the district.
22 At any time prior to tendering bonds to the district pursuant to this
23 section, any person subject to this subdivision shall deliver to the
24 legislative body of the district a certificate that he or she has
25 complied with this subdivision and applicable federal and state
26 securities laws.

27 SEC. 64. Section 53638 of the Government Code is amended
28 to read:

29 53638. (a) The deposit shall not exceed the shareholder’s
30 equity of any depository bank. For the purposes of this subdivision,
31 shareholder’s equity shall be determined in accordance with Section
32 463 of the Financial Code, but shall be deemed to include capital
33 notes and debentures.

34 (b) The deposit shall not exceed the total of the net worth of
35 any depository savings association or federal association, except
36 that deposits not exceeding a total of five hundred thousand dollars
37 (\$500,000) may be made to a savings association or federal
38 association without regard to the net worth of that depository, if
39 such deposits are insured or secured as required by law.

1 (c) The deposit to the share accounts of any regularly chartered
2 credit union shall not exceed the total of the unimpaired capital
3 and surplus of the credit union, as defined by rule of the
4 Commissioner of Financial Institutions, except that the deposit to
5 any credit union share account in an amount not exceeding five
6 hundred thousand dollars (\$500,000) may be made if the share
7 accounts of that credit union are insured or guaranteed pursuant
8 to Section 14858 of the Financial Code or are secured as required
9 by law.

10 (d) The deposit in investment certificates of a federally insured
11 industrial loan company shall not exceed the total of the unimpaired
12 capital and surplus of the insured industrial loan company.

13 SEC. 65. Section 54956.87 of the Government Code is amended
14 to read:

15 54956.87. (a) Notwithstanding any other provision of this
16 chapter, the records of a health plan that is licensed pursuant to
17 the Knox-Keene Health Care Service Plan Act of 1975 (Chapter
18 2.2 (commencing with Section 1340) of Division 2 of the Health
19 and Safety Code) and that is governed by a county board of
20 supervisors, whether paper records, records maintained in the
21 management information system, or records in any other form,
22 that relate to provider rate or payment determinations, allocation
23 or distribution methodologies for provider payments, formulas or
24 calculations for these payments, and contract negotiations with
25 providers of health care for alternative rates are exempt from
26 disclosure for a period of three years after the contract is fully
27 executed. The transmission of the records, or the information
28 contained therein in an alternative form, to the board of supervisors
29 shall not constitute a waiver of exemption from disclosure, and
30 the records and information once transmitted to the board of
31 supervisors shall be subject to this same exemption.

32 (b) Notwithstanding any other provision of law, the governing
33 board of a health plan that is licensed pursuant to the Knox-Keene
34 Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing
35 with Section 1340) of Division 2 of the Health and Safety Code)
36 and that is governed by a county board of supervisors may order
37 that a meeting held solely for the purpose of discussion or taking
38 action on health plan trade secrets, as defined in subdivision (f),
39 shall be held in closed session. The requirements of making a
40 public report of action taken in closed session, and the vote or

1 abstention of every member present, may be limited to a brief
2 general description without the information constituting the trade
3 secret.

4 (c) Notwithstanding any other provision of law, the governing
5 board of a health plan may meet in closed session to consider and
6 take action on matters pertaining to contracts and contract
7 negotiations by the health plan with providers of health care
8 services concerning all matters related to rates of payment. The
9 governing board may delete the portion or portions containing
10 trade secrets from any documents that were finally approved in
11 the closed session held pursuant to subdivision (b) that are provided
12 to persons who have made the timely or standing request.

13 (d) Nothing in this section shall be construed as preventing the
14 governing board from meeting in closed session as otherwise
15 provided by law.

16 (e) The provisions of this section shall not prevent access to any
17 records by the Joint Legislative Audit Committee in the exercise
18 of its powers pursuant to Article 1 (commencing with Section
19 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The
20 provisions of this section also shall not prevent access to any
21 records by the Department of ~~Business Oversight~~ *Managed Health*
22 *Care* in the exercise of its powers pursuant to Article 1
23 (commencing with Section 1340) of Chapter 2.2 of Division 2 of
24 the Health and Safety Code.

25 (f) For purposes of this section, “health plan trade secret” means
26 a trade secret, as defined in subdivision (d) of Section 3426.1 of
27 the Civil Code, that also meets both of the following criteria:

28 (1) The secrecy of the information is necessary for the health
29 plan to initiate a new service, program, marketing strategy, business
30 plan, or technology, or to add a benefit or product.

31 (2) Premature disclosure of the trade secret would create a
32 substantial probability of depriving the health plan of a substantial
33 economic benefit or opportunity.

34 SEC. 66. Section 1280.7 of the Insurance Code is amended to
35 read:

36 1280.7. (a) This chapter and the other provisions of this code,
37 except as set forth in this paragraph, shall not apply to or affect
38 unincorporated interindemnity or reciprocal or interinsurance
39 contracts between members of a cooperative corporation, organized
40 and operating under Part 2 (commencing with Section 12200) of

1 Division 3 of Title 1 of the Corporations Code, whose members
2 consist solely of physicians and surgeons licensed in California,
3 which contracts indemnify solely in respect to medical malpractice
4 claims against those members, and which do not collect in advance
5 of loss any moneys other than contributions by each member to a
6 collective reserve trust fund or for necessary expenses of
7 administration. However, interindemnity, reciprocal, or
8 interinsurance contracts with respect to the following types of
9 claims, in addition to medical malpractice claims, may be entered
10 into in conjunction with contracts with respect to medical
11 malpractice claims if the reserve trust fund is at least twenty million
12 dollars (\$20,000,000):

13 (1) Bodily injury or property damage arising out of the conduct
14 and of the operations of the member's professional practice
15 occurring on the member's premises.

16 (2) Officers', directors', and administrators' liability, to the
17 extent that the member's professional practice is operated as a
18 professional corporation or group.

19 (3) Nonowned automobile coverage.

20 The provisions of Chapter 3 (commencing with Section 330) of
21 Part 1 of Division 1 shall apply to unincorporated interindemnity
22 or reciprocal or interinsurance contracts. Those unincorporated
23 interindemnity or reciprocal or interinsurance contracts shall
24 comply with all of the following requirements:

25 (b) Each participating member shall enter into and, concurrently
26 therewith, receive an executed copy of a trust agreement, which
27 shall govern the collection and disposition of all funds of the
28 interindemnity arrangement.

29 The trust agreement shall, at a minimum, contain provision for
30 all the following matters:

31 (1) An initial trust corpus of not less than ten million dollars
32 (\$10,000,000), which corpus shall be a trust fund to secure
33 enforcement of the interindemnity arrangement. The average
34 contribution to the initial trust corpus shall be not less than twenty
35 thousand dollars (\$20,000) per member participating in the
36 interindemnity arrangement. The average contribution to the trust
37 fund shall continue at all times to be not less than twenty thousand
38 dollars (\$20,000) per participating member unless the
39 interindemnity arrangement is qualified to admit members under
40 the terms of subdivision (k). No such interindemnity arrangement

1 shall become operative until the requisite minimum reserve trust
2 fund has been established by contributions from not fewer than
3 500 participating members.

4 (2) The reserve trust fund created by the trust agreement shall
5 be administered by a board of trustees of three or more members,
6 all of whom shall be physicians and surgeons licensed in California,
7 participating members in the interindemnity arrangement, and
8 elected biennially or more frequently by at least a majority of all
9 members participating in the interindemnity arrangement.

10 (3) The members of the board of trustees are fiduciaries and the
11 board shall be the custodian of all funds of the interindemnity
12 arrangement, and all those funds shall be deposited in the bank or
13 banks and savings and loan associations in California as the board
14 may designate. Each account shall require two or more signatories
15 for withdrawal of funds in excess of ten thousand dollars (\$10,000).
16 The authorized signatories shall be appointed by the board and, as
17 to any withdrawal in excess of one hundred thousand dollars
18 (\$100,000), at least one of the two or more authorized signatories
19 shall be a physician and surgeon licensed in California and a
20 participating member in the interindemnity arrangement. Each
21 signatory on those accounts shall maintain, at all times while
22 empowered to draw on those funds, for the benefit of the
23 interindemnity arrangement, a bond against loss suffered through
24 embezzlement, mysterious disappearance, holdup or burglary, or
25 other loss issued by a bonding company licensed to do business
26 in California in a penal sum of not less than one hundred thousand
27 dollars (\$100,000).

28 (4) All funds held in trust that are in excess of current financial
29 needs shall be invested and reinvested from time to time, under
30 the direction of the board of trustees, in eligible securities, as
31 defined in Section 16430 of the Government Code, in portfolios
32 of eligible securities, in exchange traded financial futures contracts
33 or exchange traded options contracts to hedge investment in those
34 eligible securities, or in certificates of deposits or time deposits
35 issued by banks and savings and loan associations in California
36 duly insured by instrumentalities of the United States government.

37 Pursuant to the authority contained in Section 1 of Article XV
38 of the California Constitution, the restrictions upon rates of interest
39 contained in Section 1 of Article XV of the California Constitution
40 shall not apply to any obligations of, loans made by, or

1 forbearances of, any trust established by a cooperative corporation
2 providing indemnity pursuant to this section.

3 (5) The income earned on the corpus of the trust fund shall be
4 the source for the payment of the claims, costs, judgments,
5 settlements, and costs of administration contemplated by the
6 interindemnity arrangement, and to the extent the income is
7 insufficient for those purposes, the board of trustees shall have the
8 power and authority to assess participating members for all
9 amounts necessary to meet the obligations of the interindemnity
10 arrangement in accordance with the terms thereof. If necessary in
11 the best interests of the interindemnity arrangement, the board of
12 trustees may make assessments to increase the corpus of the trust
13 fund in accordance with the terms of the interindemnity
14 arrangement. Any assessment levied against a member shall be
15 the personal obligation of the member. Any person who obtains a
16 final judgment of recovery for medical malpractice or other liability
17 authorized by this section against a member of the interindemnity
18 arrangement shall have, in addition to any other remedy, the right
19 to assert directly all rights to indemnification that the judgment
20 debtor has under the interindemnity arrangement. The final
21 judgment shall be a lien on the reserve trust fund to secure payment
22 of the judgment, limited to the extent of the judgment debtor's
23 rights to indemnification.

24 Any change in the assessment agreement between the
25 interindemnity arrangement and its membership shall be submitted
26 to the entire membership for ratification. If the ratification process
27 is to be performed by a mail ballot, a ballot shall be sent to each
28 member by first-class mail, postage prepaid. Within 45 days after
29 the posted date on the mail ballot, each member who decides to
30 vote on the assessment change shall return his or her ballot to the
31 interindemnity arrangement for the tallying of the ballots. An
32 affirmative vote of 75 percent of those voting shall be required to
33 effectuate any change in the assessment agreement.

34 If a change in the assessment agreement is to be submitted to
35 members at a properly called meeting, the membership shall be
36 notified of the meeting and the proposed assessment change by
37 first-class mail, postage prepaid, posted at least 45 days prior to
38 the meeting. Seventy-five percent of those present in person or by
39 proxy at the meeting shall be required to effectuate any change in
40 the assessment agreement.

1 (6) Each participating member shall be covered by the
2 interindemnity arrangement for not less than one million dollars
3 (\$1,000,000) for each occurrence of professional negligence or
4 other liability authorized by this section, with the terms and
5 conditions of the coverage to be specified in the trust agreement,
6 except that the interindemnity arrangement may provide
7 participating members with an aggregate limit for all payments on
8 behalf of the member and may provide participating members with
9 less than one million dollars (\$1,000,000) of coverage for each
10 occurrence of professional negligence or other liability authorized
11 by this section if the interindemnity arrangement obtains for the
12 benefit of the members reinsurance of excess limits coverage in
13 an amount that when added to the coverage provided by the
14 interindemnity arrangement would equal not less than one million
15 dollars (\$1,000,000) for each occurrence of professional negligence
16 or other liability authorized by this section.

17 Any change in the coverage provided by the trust agreement
18 between the interindemnity arrangement and its membership shall
19 be submitted to the entire membership for ratification. If the
20 ratification process is to be performed by a mail ballot, a ballot
21 shall be sent to each member by first-class mail, postage prepaid.
22 Within 45 days after the posted date on the mail ballot, each
23 member who decides to vote on the coverage change shall return
24 his or her ballot to the interindemnity arrangement for the tallying
25 of the ballot. An affirmative vote of 75 percent of those voting
26 shall be required to effectuate any change in the coverage provided
27 by the trust agreement, except that at least 50 percent of the entire
28 membership must agree to any change.

29 If any change is to be submitted to members at a properly called
30 meeting, the membership shall be notified of the meeting and the
31 proposed coverage change by first-class mail, postage prepaid,
32 posted at least 45 days prior to the meeting. An affirmative vote
33 of 75 percent of the membership present at the meeting, in person
34 or by proxy, shall be required to effectuate any change, except that
35 at least 50 percent of the entire membership must agree to any
36 change.

37 (7) Withdrawal of all, or any portion of, the corpus of the reserve
38 trust fund shall be upon the written authorization signed by at least
39 two-thirds of the members of the board of trustees.

1 (8) The board of trustees shall cause both of the following to
2 be furnished to each member participating in the interindemnity
3 arrangement, and to be filed with the Commissioner of Business
4 Oversight:

5 (A) Within 90 days after the end of each fiscal year, a statement
6 of the assets and liabilities of the interindemnity arrangement as
7 of the end of that year, a statement of the revenue and expenditures
8 of the interindemnity arrangement, and a statement of the changes
9 in corpus of the reserve trust for that year, in each case
10 accompanied by a certificate signed by a firm of independent
11 certified public accountants selected by the board of trustees
12 indicating that the firm has conducted an audit of those statements
13 in accordance with generally accepted auditing standards and
14 indicating the results of the audit.

15 (B) Within 45 days after the end of each of the first three
16 quarterly periods of each fiscal year, a statement of the assets and
17 liabilities of the interindemnity arrangement as of the end of the
18 quarterly period, a statement of the revenue and expenditures of
19 the interindemnity arrangement, and a statement of the changes in
20 corpus of the reserve trust for the period, in each case accompanied
21 by a certificate signed by a majority of the members of the board
22 of trustees to the effect that the statements were prepared from the
23 official books and records of the interindemnity arrangement.

24 (C) In addition to the statements required to be filed pursuant
25 to this paragraph, the board of trustees shall annually file with the
26 Commissioner of Business Oversight an authorization for
27 disclosure to the commissioner of all financial records pertaining
28 to the interindemnity arrangement. For the purpose of this
29 subparagraph, the authorization for disclosure shall also include
30 the financial records of any association, partnership, or corporation
31 that has management or control of the funds or the operation of
32 the interindemnity arrangement.

33 (9) The trust agreement shall also provide for all the following:

34 (A) In the event a participating member who is in full
35 compliance with the trust agreement, including the payment of all
36 outstanding dues and assessments, dies, the initial contribution
37 made by the decedent shall be returned to the member's estate or
38 designated beneficiary; the indemnity coverage shall continue for
39 the benefit of the decedent's estate in respect of occurrences during
40 the time the decedent was a participating member; and neither the

1 person receiving the repayment of the initial contribution nor the
2 decedent's estate shall be responsible for any assessments levied
3 following the death of the member.

4 (B) A participating member who is then in full compliance with
5 the trust agreement and who has reached the age of 65 years and
6 who has retired completely from the practice of medicine may
7 elect to retire from the interindemnity arrangement, in which case
8 the member shall not be responsible for assessments levied
9 following the date notice of retirement is given to the trust.
10 Following that retirement, the indemnity coverage shall continue
11 for the benefit of the member in respect of occurrences prior to
12 the time the member retired from the interindemnity arrangement.
13 That retired member's initial contribution shall be repaid 10 years
14 from the date the notice of retirement is received by the trust, or
15 an earlier date as specified in the trust agreement. The board of
16 trustees may reduce the age for retirement to not less than 55 years
17 subject to all other requirements in this paragraph and any
18 additional requirements deemed necessary by the board.

19 (C) During any period in which a participating member, who
20 is then in full compliance with the trust agreement, has, in the
21 judgment of the board of trustees, become unable to perform any
22 and every duty of his or her regular professional occupation, the
23 participating member may request disability status in accordance
24 with the terms of the interindemnity arrangement. During any
25 period of disability status, the member shall not be responsible for
26 assessments levied during the period and, if so provided in the
27 interindemnity arrangement, all indemnity coverage, both as to
28 defense and payment of claims, shall terminate as to occurrences
29 arising out of the actions of the participating member during the
30 period of disability status.

31 (D) In the event a participating member fails to pay any
32 assessment when due, the board of trustees may terminate that
33 person's membership status if the failure to pay is not cured within
34 30 days from the date the assessment was due. Upon that
35 termination the former participating member shall not be entitled
36 to the return of all or any part of his or her initial contribution, and
37 the indemnity coverage shall thereupon terminate as to all claims
38 then pending against that person and in respect to all occurrences
39 prior to the date of that termination of membership. However, in
40 the event the interindemnity arrangement is then providing legal

1 defense services to that person, the interindemnity arrangement
2 shall continue to provide those services for a period of 10 days
3 following that termination.

4 (E) In the event a participating member fails to comply with
5 any provision of the trust agreement (other than a failure to pay
6 assessments when due), the board of trustees may terminate that
7 person's membership status if the failure to comply is not cured
8 within 60 days from the date the person is notified of the failure,
9 provided that before that membership status may be terminated
10 the person shall be given the right to call for a hearing before the
11 board of trustees (to be held before the expiration of the 60-day
12 period), at which hearing the person shall be given the opportunity
13 to demonstrate to the board of trustees that no failure to comply
14 has occurred or, if it has occurred, that it has been cured. Upon
15 that termination, the former participating member shall not be
16 entitled to the return of all or any part of his or her initial
17 contribution, and the indemnity coverage shall thereupon terminate
18 as to all claims then pending against the person and in respect to
19 all occurrences prior to the date of the termination of membership.
20 However, in the event the interindemnity arrangement is then
21 providing legal defense services to that person, the interindemnity
22 arrangement shall continue to provide those services for a period
23 of 10 days following the termination.

24 (F) A participating member who is then in full compliance with
25 the trust agreement may elect voluntarily to terminate his or her
26 membership in the interindemnity arrangement. Upon that
27 voluntary termination, that person may further elect to cease being
28 responsible for future assessments, or to continue to pay those
29 assessments until the time as the person's initial contribution is
30 repaid. In the event the person elects to cease being responsible
31 for future assessments, the indemnity coverage shall thereupon
32 terminate and the person shall either be responsible for his or her
33 own exposure for acts committed while a participating member in
34 the interindemnity arrangement, or he or she may request the
35 interindemnity arrangement to purchase or provide, at the cost of
36 the person, coverage for that exposure. The initial contribution of
37 the person shall be repaid on the 10th anniversary of the date the
38 contribution was made. In the event the person elects to continue
39 to be responsible for assessments, the indemnity coverage shall
40 continue in respect of occurrences prior to the date of the voluntary

1 termination, and the initial contribution of the person shall be
2 repaid at the time as the board of trustees is satisfied that (i) there
3 are no claims pending against the person in respect of occurrences
4 during the time the person was a participating member, and (ii)
5 the statute of limitations has run on all claims that might be asserted
6 against that person in respect of occurrences during that time. In
7 no event shall that repayment be made earlier than the 10th
8 anniversary of the date the contribution was made.

9 Any person whose membership in an interindemnity arrangement
10 is involuntarily terminated for failure to pay assessments or who
11 voluntarily terminates that membership and elects to be responsible
12 for his or her own exposure for acts committed while a participating
13 member, shall not be eligible to become a member of any other
14 interindemnity arrangement for a period of five years after the
15 termination unless, on the effective date of the act which amended
16 this section during the 1985–86 Regular Session, the person had
17 on file with the Department of Business Oversight a copy of a
18 subscription agreement signifying the person's agreement to
19 transfer membership or had paid a minimum of ten thousand dollars
20 (\$10,000) to another interindemnity arrangement that was granted
21 a permit to organize prior to January 1, 1985.

22 (G) The board of trustees shall have the right to terminate the
23 membership of a participating member if the board of trustees
24 determines that the termination is in the best interests of the
25 interindemnity arrangement even though that person has complied
26 with all of the provisions of the trust agreement. A termination
27 may be effected only if at least two-thirds of the members of the
28 board of trustees indicate in writing their decision to terminate. If
29 the board of trustees proposes to terminate a member, the member
30 shall have the right to call a special meeting of all participating
31 members in accordance with the rules established by the board of
32 trustees for the purpose of voting on whether or not the member
33 shall be terminated. The member shall not be terminated if at least
34 two-thirds of the participating members present, in person or by
35 proxy, indicate that the member should not be terminated. In the
36 event a member is terminated, the person shall elect either: (i) to
37 request the return of his or her initial contribution, in which case
38 the contribution shall be repaid and the indemnity coverage shall
39 thereupon terminate as to all claims then pending against the person
40 and in respect to all occurrences prior to the date of the termination

1 of membership. However, in the event the interindemnity
2 arrangement is then providing legal defense services to the person,
3 the interindemnity arrangement shall continue to provide those
4 services for a period of 30 days to enable the person to assume his
5 or her own defense; or (ii) to release all rights to the return of the
6 initial contribution, in which case the indemnity coverage shall
7 continue for the benefit of the member in respect of occurrences
8 during the time the person was a participating member and the
9 person shall have no responsibility for assessments levied following
10 that termination. The interindemnity arrangement may provide
11 that if a member is terminated and fails to make the election set
12 forth herein within 45 days of the date of notification of termination
13 of membership, the participating member shall be deemed to have
14 elected to release all rights to a return of his or her initial
15 contribution, in which case indemnity coverage shall apply for the
16 benefit of the member with respect to occurrences occurring prior
17 to the termination.

18 (10) Each member participating in the interindemnity
19 arrangement shall have the right of access to, and the inspection
20 of, the books and records of the interindemnity arrangement, which
21 rights shall be similar to the corporate shareholders pursuant to
22 Section 3003 of the Corporations Code, or, commencing January
23 1, 1977, Sections 1600 to 1605, inclusive, of the Corporations
24 Code.

25 (11) There shall be a meeting of all members participating in
26 the interindemnity arrangement, at least annually, after not less
27 than 10 days' written notice has been given, at a location
28 reasonably convenient to the participating members and on a date
29 that is within a reasonable period of time following the distribution
30 of the annual financial statements.

31 (12) Notwithstanding Sections 12453 and 12703 of the
32 Corporations Code, on any matter to be voted upon by the
33 membership at either a regular or special meeting, a member shall
34 have the right to vote in person or by written proxy filed with the
35 corporate secretary prior to the meeting. No proxy shall be made
36 irrevocable, nor be valid beyond the earliest of the following dates:

37 (A) The date of expiration set forth in the proxy.

38 (B) The date of termination of membership.

39 (C) Eleven months from the date of execution of the proxy.

1 (D) Such time as may be specified in the bylaws, not to exceed
2 11 months.

3 (13) The interindemnity arrangement, and the reserve trust fund
4 incident thereto, shall be subject to termination at any time by the
5 vote or written consent of not less than three-fourths of the
6 participating members.

7 (c) The board of trustees shall cause to be recorded with the
8 office of the county recorder of the county of the principal place
9 of business of the interindemnity arrangement within 90 days
10 following the end of each fiscal year, a written statement, executed
11 by a majority of the board of trustees under penalty of perjury,
12 reciting that each member participating in the interindemnity
13 arrangement was mailed a copy of the annual financial statement
14 and quarterly audit certificates by first-class mail, postage prepaid,
15 required pursuant to paragraph (8) of subdivision (a).

16 (d) Each person solicited to become a participating member in
17 an interindemnity arrangement shall receive in writing, at least 48
18 hours prior to the execution by the prospective participating
19 member of the trust agreement, and at least 48 hours prior to the
20 payment by the prospective participating member of any
21 consideration in connection with the interindemnity arrangement,
22 the following information:

23 (1) A copy of the articles of incorporation and bylaws of the
24 cooperative corporation and a copy of the form of trust agreement
25 to be executed by the prospective participating member.

26 (2) A disclosure statement regarding the interindemnity
27 arrangement. The disclosure statement shall contain on the first
28 or cover page a legend in boldface type reading substantially as
29 follows:

30 “THE INTERINDEMNITY ARRANGEMENT
31 CONTEMPLATED HEREIN PROVIDES THAT
32 PARTICIPATING MEMBERS HAVE UNLIMITED PERSONAL
33 LIABILITY FOR ASSESSMENTS THAT MAY BE LEVIED
34 TO PAY FOR THE PROFESSIONAL NEGLIGENCE OR
35 OTHER LIABILITY AUTHORIZED BY THIS SECTION. NO
36 ASSURANCES CAN BE GIVEN REGARDING THE AMOUNT
37 OR FREQUENCY OF ASSESSMENTS WHICH MAY BE
38 LEVIED, OR THAT ALL PARTICIPATING MEMBERS WILL
39 MAKE TIMELY PAYMENT OF THEIR ASSESSMENTS TO

1 COVER THE PROFESSIONAL NEGLIGENCE OR OTHER
2 LIABILITY AUTHORIZED BY THIS SECTION.”

3 (3) The disclosure statement shall further contain all of the
4 following information:

5 (A) The amount, nature, and terms and conditions of the
6 professional negligence or other liability relating to a member’s
7 professional practice coverage available under the interindemnity
8 arrangement.

9 (B) The amount of the initial contribution required of each
10 participating member and a statement of the minimum number of
11 members and aggregate contributions required for the
12 interindemnity arrangement to commence.

13 (C) The names, addresses, and professional experience of each
14 member of the board of trustees.

15 (D) The requirements for admission as a participating member.

16 (E) A statement of the services to be provided under the
17 interindemnity arrangement to each participating member.

18 (F) A statement regarding the obligation of each member to pay
19 assessments and the consequences for failure to do so.

20 (G) A statement of the rights and obligations of a participating
21 member in the event the member dies, retires, becomes disabled,
22 or terminates participation for any reason, or the interindemnity
23 arrangement terminates for any reason.

24 (H) A statement regarding the services to be provided, indicating
25 whether these services will be delegated to others pursuant to a
26 contractual arrangement. For those services delegated to others
27 pursuant to a contractual arrangement, a statement fully disclosing
28 and itemizing all consideration received directly or indirectly under
29 the arrangement, and indicating what the consideration is for, and
30 how, when, and to whom the consideration will be paid.

31 (I) A statement of the voting rights of the members and the
32 circumstances under which participation of a member may be
33 terminated and under which the interindemnity arrangement may
34 be terminated.

35 (J) If any statement of estimated or projected financial
36 information for the interindemnity arrangement is used, a statement
37 of the estimation or projection and a summary of the data and
38 assumptions upon which it is based.

39 (4) A list with the names and addresses of current participating
40 members of the interindemnity arrangement.

(e) No officer, director, trustee, employee, or member of the interindemnity arrangement or the cooperative corporation shall receive, or be entitled to receive, any payment, bonus, salary, income, compensation, or other benefit whatsoever, either from the reserve trust fund or the income therefrom or from any other funds of the interindemnity arrangement or the members thereof based on the number of participating members, or the amount of the reserve trust fund or other funds of the interindemnity arrangement.

(f) A peer review committee or committees shall be established by the trust agreement to review the qualifications of any physician and surgeon to participate or continue to participate in the interindemnity arrangement, and to review the quality of medical services rendered by any participating member, as well as the validity of medical malpractice claims made against participating members. Any physician and surgeon, prior to becoming a participating member of the interindemnity arrangement, shall be reviewed and approved by a majority of the members of the peer review committee. No peer review committee, or any of its members, shall be liable for any action taken by the committee in reviewing the qualifications of a physician and surgeon to participate or continue to participate, or the quality of medical services rendered, or the validity of a medical malpractice claim, unless it is alleged and proved that the action was taken with actual malice.

(g) The following are hereby defined as unfair methods of competition and deceptive acts or practices with respect to cooperative corporations or interindemnity arrangements provided for in this section:

(1) Making any false or misleading statement as to, or issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any interindemnity arrangement or the benefits or advantages promised thereby, or making any misleading representation or any misrepresentation as to the financial condition of the interindemnity arrangement, or making any misrepresentation to any participating member for the purpose of inducing or tending to induce the member to lapse, forfeit, or surrender his or her rights to indemnification under the interindemnity arrangement. It shall be a false or misleading

1 statement to state or represent that a cooperative corporation or
2 interindemnity arrangement is or constitutes “insurance” or an
3 “insurance company” or an “insurance policy.”

4 (2) Making or disseminating or causing to be made or
5 disseminated before the public in this state, in any newspaper or
6 other publication, or any advertising device, or by public outcry
7 or proclamation, or in any other manner or means whatsoever, any
8 statement containing any assertion, representation, or statement
9 with respect to those cooperative corporations or interindemnity
10 arrangements, or with respect to any person in the conduct of those
11 cooperative corporations or interindemnity arrangements, which
12 is untrue, deceptive, or misleading, and which is known, or which
13 by the exercise of reasonable care should be known, to be untrue,
14 deceptive, or misleading. It shall be a false or misleading statement
15 to state or represent that a cooperative corporation or
16 interindemnity arrangement is or constitutes “insurance” or an
17 “insurance company” or an “insurance policy.”

18 (3) Entering into any agreement to commit, or by any concerted
19 action committing, any act of boycott, coercion, or intimidation
20 resulting in or tending to result in an unreasonable restraint of, or
21 monopoly in, those cooperative corporations or interindemnity
22 arrangements.

23 (4) Filing with any supervisory or other public official, or
24 making, publishing, disseminating, circulating, or delivering to
25 any person, or placing before the public, or causing directly or
26 indirectly, to be made, published, disseminated, circulated, or
27 delivered to any person, or placed before the public any false
28 statement of financial condition of a cooperative corporation or
29 interindemnity arrangement with intent to deceive.

30 (5) Making any false entry in any book, report, or statement of
31 a cooperative corporation or interindemnity arrangement with
32 intent to deceive any agent or examiner lawfully appointed to
33 examine into its condition or into any of its affairs, or any public
34 official to whom a cooperative corporation or interindemnity
35 arrangement is required by law to report, or who has authority by
36 law to examine into its condition or into any of its affairs, or, with
37 like intent, willfully omitting to make a true entry of any material
38 fact pertaining to a cooperative corporation or interindemnity
39 arrangement in any book, report, or statement of a cooperative
40 corporation or interindemnity arrangement.

1 (6) Making or disseminating, or causing to be made or
2 disseminated, before the public in this state, in any newspaper or
3 other publication, or any other advertising device, or by public
4 outcry or proclamation, or in any other manner or means
5 whatsoever, whether directly or by implication, any statement that
6 a cooperative corporation or interindemnity arrangement is a
7 member of the California Insurance Guarantee Association, or
8 insured against insolvency as defined in Section 119.5. This
9 paragraph shall not be interpreted to prohibit any activity of the
10 California Insurance Guarantee Association or of the commissioner
11 authorized, directly or by implication, by Article 14.2 (commencing
12 with Section 1063) of Chapter 1.

13 (7) Knowingly committing or performing with a frequency as
14 to indicate a general business practice any of the following unfair
15 claims settlement practices:

16 (A) Misrepresenting to claimants pertinent facts or provisions
17 relating to any coverage at issue.

18 (B) Failing to acknowledge and act promptly upon
19 communications with respect to claims arising under those
20 interindemnity arrangements.

21 (C) Failing to adopt and implement reasonable standards for
22 the prompt investigation and processing of claims arising under
23 those interindemnity arrangements.

24 (D) Failing to affirm or deny coverage of claims within a
25 reasonable time after proof of claim requirements have been
26 completed and submitted by the participating member.

27 (E) Not attempting in good faith to effectuate prompt, fair, and
28 equitable settlements of claims in which liability has become
29 reasonably clear.

30 (F) Compelling participating members to institute litigation to
31 recover amounts due under an interindemnity arrangement by
32 offering substantially less than the amounts ultimately recovered
33 in actions brought by those participating members when those
34 participating members have made claims under those
35 interindemnity arrangements for amounts reasonably similar to
36 the amounts ultimately recovered.

37 (G) Attempting to settle a claim by a participating member for
38 less than the amount to which a reasonable person would have
39 believed he or she was entitled by reference to written or printed

1 advertising material accompanying or made part of an application
2 for membership in an interindemnity arrangement.

3 (H) Attempting to settle claims on the basis of an interindemnity
4 arrangement that was altered without notice to the participating
5 member.

6 (I) Failing, after payment of a claim, to inform participating
7 members, upon request by them, of the coverage under which
8 payment has been made.

9 (J) Making known to claimants a practice of the cooperative
10 corporation or interindemnity arrangement of appealing from
11 arbitration awards in favor of claimants for the purpose of
12 compelling them to accept settlements or compromises less than
13 the amount awarded in arbitration.

14 (K) Delaying the investigation or payment of claims by requiring
15 a claimant, or his or her physician, to submit a preliminary claim
16 report, and then requiring the subsequent submission of formal
17 proof of loss forms, both of which submissions contain
18 substantially the same information.

19 (L) Failing to settle claims promptly, where liability has become
20 apparent, under one portion of an interindemnity arrangement in
21 order to influence settlements under other portions of the
22 interindemnity arrangement.

23 (M) Failing to provide promptly a reasonable explanation of
24 the basis relied on in the interindemnity arrangement, in relation
25 to the facts of applicable law, for the denial of a claim or for the
26 offer of a compromise settlement.

27 (N) Directly advising a claimant not to obtain the services of
28 an attorney.

29 (O) Misleading a claimant as to the applicable statute of
30 limitations.

31 (h) Notwithstanding any contrary provisions of Part 2
32 (commencing with Section 12200) of Division 3 of Title 1 of the
33 Corporations Code, it shall not be necessary to hold a meeting of
34 members of the cooperative corporation for the purpose of electing
35 directors if the bylaws provide the election may be held by
36 first-class mail balloting. First-class mail balloting may also be
37 used in conjunction with a meeting at which directors are to be
38 elected and all mail ballots shall count toward establishing a
39 quorum for the meeting for the limited purpose of the issues set
40 forth in the mail ballot. Directors shall be elected as follows:

1 (1) The candidates receiving the highest number of votes, up to
2 the number of directors to be elected, by a specified date at least
3 45 days but not later than 60 days after the ballots are first mailed,
4 postage prepaid, to the members (or the date of a meeting of
5 members held in conjunction therewith) shall be elected.

6 (2) In the event that no candidate receives a majority of the
7 votes cast for a vacant office, a runoff election shall be held
8 between the two candidates receiving the highest number of votes
9 cast. The runoff election shall be held at least 45 days but not more
10 than 60 days after the ballots for the election are mailed, postage
11 prepaid. In the event that there is more than one office for which
12 no candidate receives a majority of the votes cast, the candidates
13 for the runoff shall be twice the number of vacant offices, and shall
14 be those persons who received the highest number of votes therefor.

15 Those first-class mail ballots shall be kept on file for a period
16 of three months after all vacant board positions have been filled,
17 and shall be subject to inspection at any reasonable time by any
18 members of the cooperative corporation.

19 (i) No officer, director, trustee, or member of the interindemnity
20 arrangement or the cooperative corporation, or any entity in which
21 that person has a material financial interest, shall enter into or
22 renew any transaction or contract with the trust unless the material
23 facts as to the transaction or contract and as to the interest of the
24 person are fully disclosed to the participating members, and the
25 transaction or contract is approved by an affirmative vote of at
26 least 75 percent of the membership present at a meeting, in person
27 or by proxy. If any transaction or contract is to be submitted to
28 members at a properly called meeting, the membership shall be
29 notified of the meeting and of the transaction or contract by
30 first-class mail, postage prepaid, at least 45 days prior to the
31 meeting.

32 (j) Services provided to the trust pursuant to a delegated
33 contractual arrangement shall be embodied in a written contract.
34 Each written contract shall provide for reasonable consideration
35 to the parties. In addition, each written contract shall be disclosed
36 annually to participating members in a disclosure report containing
37 the information described in subparagraph (H) of paragraph (3) of
38 subdivision—(e) (d). The disclosure report shall be sent to
39 participating members by first-class mail, postage prepaid, and
40 shall be mailed separately from any statements, records, or other

1 documents. The disclosure requirements of this subdivision shall
2 apply to all existing and future written contracts.

3 (k) Upon request of the Commissioner of Business Oversight,
4 an interindemnity arrangement shall immediately forward to the
5 commissioner a current list of participating members, including
6 the names, addresses, and telephone numbers of those members.

7 (l) Notwithstanding any provision to the contrary, whenever the
8 membership of a cooperative organization, organized pursuant to
9 Part 2 (commencing with Section 12200) of Division 3 of Title 1
10 of the Corporations Code and consisting solely of physicians and
11 surgeons licensed in this state amounts to 2,000 or more members
12 and the trust fund is at least forty million dollars (\$40,000,000),
13 which is available to the public for malpractice claims or other
14 claims authorized by this section, the cooperative is authorized to
15 admit members without a contribution to that trust fund if
16 assessments are charged to each of those members within the first
17 50 months in an amount equal to the amount of the contribution
18 to the reserve fund that would otherwise be required.

19 SEC. 67. Section 12693.35 of the Insurance Code is amended
20 to read:

21 12693.35. Participating health, dental, and vision plans shall
22 have, but need not be limited to, all of the following operating
23 characteristics satisfactory to the board in consultation with the
24 plan's licensing or regulatory oversight agency:

25 (a) Strong financial condition, including the ability to assume
26 the risk of providing and paying for covered services. A
27 participating plan may utilize reinsurance, provider risk sharing,
28 and other appropriate mechanisms to share a portion of the risk.

29 (b) Adequate administrative management.

30 (c) A satisfactory grievance procedure.

31 (d) Participating plans that contract with or employ health care
32 providers shall have mechanisms to accomplish all of the following,
33 in a manner satisfactory to the board:

34 (1) Review the quality of care covered.

35 (2) Review the appropriateness of care covered.

36 (3) Provide accessible health care services.

37 (e) (1) Before the effective date of the contract, the participating
38 health plan shall have devised a system for identifying in a simple
39 and clear fashion both in its own records and in the medical records

1 of subscribers the fact that the services provided are provided under
2 the program.

3 (2) Throughout the duration of the contract, the plan shall use
4 the system described in paragraph (1).

5 (f) Plans licensed by the Department of ~~Business Oversight~~
6 *Managed Health Care* shall be deemed to meet the requirements
7 of subdivisions (a) to (d), inclusive, of this section.

8 SEC. 68. Section 14053 of the Insurance Code is amended to
9 read:

10 14053. In lieu of the surety bond required by this article there
11 may be deposited with the State of California the sum of two
12 thousand dollars (\$2,000) in cash, or evidence of deposit of the
13 sum of two thousand dollars (\$2,000) in banks authorized to do
14 business in this state and insured by the Federal Deposit Insurance
15 Corporation, or investment certificates or share accounts in the
16 amount of two thousand dollars (\$2,000) issued by a savings
17 association doing business in this state and insured by the Federal
18 Deposit Insurance Corporation, or evidence of a certificate of funds
19 or share account of the sum of two thousand dollars (\$2,000) in a
20 credit union, as defined in Section 14000 of the Financial Code,
21 whose share deposits are guaranteed by the National Credit Union
22 Administration or guaranteed by any other agency approved by
23 the Department of Business Oversight.

24 SEC. 69. Section 15036 of the Insurance Code is amended to
25 read:

26 15036. In lieu of the surety bond required by this chapter there
27 may be deposited with the State of California the sum of twenty
28 thousand dollars (\$20,000) in cash, or evidence of deposit of the
29 sum of twenty thousand dollars (\$20,000) in banks authorized to
30 do business in this state and insured by the Federal Deposit
31 Insurance Corporation, or investment certificates or share accounts
32 in the amount of twenty thousand dollars (\$20,000) issued by a
33 savings association doing business in this state and insured by the
34 Federal Deposit Insurance Corporation, or evidence of a certificate
35 of funds or share account of the sum of twenty thousand dollars
36 (\$20,000) in a credit union as defined in Section 14000 of the
37 Financial Code whose share deposits are guaranteed by the
38 National Credit Union Administration or guaranteed by any other
39 agency approved by the Department of Business Oversight.

40 SEC. 70. Section 4600.5 of the Labor Code is amended to read:

1 4600.5. (a) Any health care service plan licensed pursuant to
2 the Knox-Keene Health Care Service Plan Act, a disability insurer
3 licensed by the Department of Insurance, or any entity, including,
4 but not limited to, workers' compensation insurers and third-party
5 administrators authorized by the administrative director under
6 subdivision (e), may make written application to the administrative
7 director to become certified as a health care organization to provide
8 health care to injured employees for injuries and diseases
9 compensable under this article.

10 (b) Each application for certification shall be accompanied by
11 a reasonable fee prescribed by the administrative director, sufficient
12 to cover the actual cost of processing the application. A certificate
13 is valid for the period that the director may prescribe unless sooner
14 revoked or suspended.

15 (c) If the health care organization is a health care service plan
16 licensed pursuant to the Knox-Keene Health Care Service Plan
17 Act, and has provided the Managed Care Unit of the Division of
18 Workers' Compensation with the necessary documentation to
19 comply with this subdivision, that organization shall be deemed
20 to be a health care organization able to provide health care pursuant
21 to Section 4600.3, without further application duplicating the
22 documentation already filed with the Department of Managed
23 Health Care. These plans shall be required to remain in good
24 standing with the Department of Managed Health Care, and shall
25 meet the following additional requirements:

26 (1) Proposes to provide all medical and health care services that
27 may be required by this article.

28 (2) Provides a program involving cooperative efforts by the
29 employees, the employer, and the health plan to promote workplace
30 health and safety, consultative and other services, and early return
31 to work for injured employees.

32 (3) Proposes a timely and accurate method to meet the
33 requirements set forth by the administrative director for all carriers
34 of workers' compensation coverage to report necessary information
35 regarding medical and health care service cost and utilization, rates
36 of return to work, average time in medical treatment, and other
37 measures as determined by the administrative director to enable
38 the director to determine the effectiveness of the plan.

39 (4) Agrees to provide the administrative director with
40 information, reports, and records prepared and submitted to the

1 Department of Managed Health Care in compliance with the
2 Knox-Keene Health Care Service Plan Act, relating to financial
3 solvency, provider accessibility, peer review, utilization review,
4 and quality assurance, upon request, if the administrative director
5 determines the information is necessary to verify that the plan is
6 providing medical treatment to injured employees in compliance
7 with the requirements of this code.

8 Disclosure of peer review proceedings and records to the
9 administrative director shall not alter the status of the proceedings
10 or records as privileged and confidential communications pursuant
11 to Sections 1370 and 1370.1 of the Health and Safety Code.

12 (5) Demonstrates the capability to provide occupational
13 medicine and related disciplines.

14 (6) Complies with any other requirement the administrative
15 director determines is necessary to provide medical services to
16 injured employees consistent with the intent of this article,
17 including, but not limited to, a written patient grievance policy.

18 (d) If the health care organization is a disability insurer licensed
19 by the Department of Insurance, and is in compliance with
20 subdivision (d) of Sections 10133 and 10133.5 of the Insurance
21 Code, the administrative director shall certify the organization to
22 provide health care pursuant to Section 4600.3 if the director finds
23 that the plan is in good standing with the Department of Insurance
24 and meets the following additional requirements:

25 (1) Proposes to provide all medical and health care services that
26 may be required by this article.

27 (2) Provides a program involving cooperative efforts by the
28 employees, the employer, and the health plan to promote workplace
29 health and safety, consultative and other services, and early return
30 to work for injured employees.

31 (3) Proposes a timely and accurate method to meet the
32 requirements set forth by the administrative director for all carriers
33 of workers' compensation coverage to report necessary information
34 regarding medical and health care service cost and utilization, rates
35 of return to work, average time in medical treatment, and other
36 measures as determined by the administrative director to enable
37 the director to determine the effectiveness of the plan.

38 (4) Agrees to provide the administrative director with
39 information, reports, and records prepared and submitted to the
40 Department of Insurance in compliance with the Insurance Code

1 relating to financial solvency, provider accessibility, peer review,
2 utilization review, and quality assurance, upon request, if the
3 administrative director determines the information is necessary to
4 verify that the plan is providing medical treatment to injured
5 employees consistent with the intent of this article.

6 Disclosure of peer review proceedings and records to the
7 administrative director shall not alter the status of the proceedings
8 or records as privileged and confidential communications pursuant
9 to subdivision (d) of Section 10133 of the Insurance Code.

10 (5) Demonstrates the capability to provide occupational
11 medicine and related disciplines.

12 (6) Complies with any other requirement the administrative
13 director determines is necessary to provide medical services to
14 injured employees consistent with the intent of this article,
15 including, but not limited to, a written patient grievance policy.

16 (e) If the health care organization is a workers' compensation
17 insurer, third-party administrator, or any other entity that the
18 administrative director determines meets the requirements of
19 Section 4600.6, the administrative director shall certify the
20 organization to provide health care pursuant to Section 4600.3 if
21 the director finds that it meets the following additional
22 requirements:

23 (1) Proposes to provide all medical and health care services that
24 may be required by this article.

25 (2) Provides a program involving cooperative efforts by the
26 employees, the employer, and the health plan to promote workplace
27 health and safety, consultative and other services, and early return
28 to work for injured employees.

29 (3) Proposes a timely and accurate method to meet the
30 requirements set forth by the administrative director for all carriers
31 of workers' compensation coverage to report necessary information
32 regarding medical and health care service cost and utilization, rates
33 of return to work, average time in medical treatment, and other
34 measures as determined by the administrative director to enable
35 the director to determine the effectiveness of the plan.

36 (4) Agrees to provide the administrative director with
37 information, reports, and records relating to provider accessibility,
38 peer review, utilization review, quality assurance, advertising,
39 disclosure, medical and financial audits, and grievance systems,
40 upon request, if the administrative director determines the

1 information is necessary to verify that the plan is providing medical
2 treatment to injured employees consistent with the intent of this
3 article.

4 Disclosure of peer review proceedings and records to the
5 administrative director shall not alter the status of the proceedings
6 or records as privileged and confidential communications pursuant
7 to subdivision (d) of Section 10133 of the Insurance Code.

8 (5) Demonstrates the capability to provide occupational
9 medicine and related disciplines.

10 (6) Complies with any other requirement the administrative
11 director determines is necessary to provide medical services to
12 injured employees consistent with the intent of this article,
13 including, but not limited to, a written patient grievance policy.

14 (7) Complies with the following requirements:

15 (A) An organization certified by the administrative director
16 under this subdivision may not provide or undertake to arrange
17 for the provision of health care to employees, or to pay for or to
18 reimburse any part of the cost of that health care in return for a
19 prepaid or periodic charge paid by or on behalf of those employees.

20 (B) Every organization certified under this subdivision shall
21 operate on a fee-for-service basis. As used in this section, fee for
22 service refers to the situation where the amount of reimbursement
23 paid by the employer to the organization or providers of health
24 care is determined by the amount and type of health care rendered
25 by the organization or provider of health care.

26 (C) An organization certified under this subdivision is prohibited
27 from assuming risk.

28 (f) (1) A workers' compensation health care provider
29 organization authorized by the Department of Business Oversight
30 on December 31, 1997, shall be eligible for certification as a health
31 care organization under subdivision (e).

32 (2) An entity that had, on December 31, 1997, submitted an
33 application with the Commissioner of Business Oversight under
34 Part 3.2 (commencing with Section 5150) shall be considered an
35 applicant for certification under subdivision (e) and shall be entitled
36 to priority in consideration of its application. The Commissioner
37 of Business Oversight shall provide complete files for all pending
38 applications to the administrative director on or before January
39 31, 1998.

1 (g) The provisions of this section shall not affect the
2 confidentiality or admission in evidence of a claimant's medical
3 treatment records.

4 (h) Charges for services arranged for or provided by health care
5 service plans certified by this section and that are paid on a
6 per-enrollee-periodic-charge basis shall not be subject to the
7 schedules adopted by the administrative director pursuant to
8 Section 5307.1.

9 (i) Nothing in this section shall be construed to expand or
10 constrict any requirements imposed by law on a health care service
11 plan or insurer when operating as other than a health care
12 organization pursuant to this section.

13 (j) In consultation with interested parties, including the
14 Department of Business Oversight and the Department of
15 Insurance, the administrative director shall adopt rules necessary
16 to carry out this section.

17 (k) The administrative director shall refuse to certify or may
18 revoke or suspend the certification of any health care organization
19 under this section if the director finds that:

20 (1) The plan for providing medical treatment fails to meet the
21 requirements of this section.

22 (2) A health care service plan licensed by the Department of
23 Managed Health Care, a workers' compensation health care
24 provider organization authorized by the Department of Business
25 Oversight, or a carrier licensed by the Department of Insurance is
26 not in good standing with its licensing agency.

27 (3) Services under the plan are not being provided in accordance
28 with the terms of a certified plan.

29 (l) (1) When an injured employee requests chiropractic
30 treatment for work-related injuries, the health care organization
31 shall provide the injured worker with access to the services of a
32 chiropractor pursuant to guidelines for chiropractic care established
33 by paragraph (2). Within five working days of the employee's
34 request to see a chiropractor, the health care organization and any
35 person or entity who directs the kind or manner of health care
36 services for the plan shall refer an injured employee to an affiliated
37 chiropractor for work-related injuries that are within the guidelines
38 for chiropractic care established by paragraph (2). Chiropractic
39 care rendered in accordance with guidelines for chiropractic care

1 established pursuant to paragraph (2) shall be provided by duly
2 licensed chiropractors affiliated with the plan.

3 (2) The health care organization shall establish guidelines for
4 chiropractic care in consultation with affiliated chiropractors who
5 are participants in the health care organization's utilization review
6 process for chiropractic care, which may include qualified medical
7 evaluators knowledgeable in the treatment of chiropractic
8 conditions. The guidelines for chiropractic care shall, at a
9 minimum, explicitly require the referral of any injured employee
10 who so requests to an affiliated chiropractor for the evaluation or
11 treatment, or both, of neuromusculoskeletal conditions.

12 (3) Whenever a dispute concerning the appropriateness or
13 necessity of chiropractic care for work-related injuries arises, the
14 dispute shall be resolved by the health care organization's
15 utilization review process for chiropractic care in accordance with
16 the health care organization's guidelines for chiropractic care
17 established by paragraph (2).

18 Chiropractic utilization review for work-related injuries shall be
19 conducted in accordance with the health care organization's
20 approved quality assurance standards and utilization review process
21 for chiropractic care. Chiropractors affiliated with the plan shall
22 have access to the health care organization's provider appeals
23 process and, in the case of chiropractic care for work-related
24 injuries, the review shall include review by a chiropractor affiliated
25 with the health care organization, as determined by the health care
26 organization.

27 (4) The health care organization shall inform employees of the
28 procedures for processing and resolving grievances, including
29 those related to chiropractic care, including the location and
30 telephone number where grievances may be submitted.

31 (5) All guidelines for chiropractic care and utilization review
32 shall be consistent with the standards of this code that require care
33 to cure or relieve the effects of the industrial injury.

34 (m) Individually identifiable medical information on patients
35 submitted to the division shall not be subject to the California
36 Public Records Act (Chapter 3.5 (commencing with Section 6250)
37 of Division 7 of Title 1 of the Government Code).

38 (n) (1) When an injured employee requests acupuncture
39 treatment for work-related injuries, the health care organization
40 shall provide the injured worker with access to the services of an

1 acupuncturist pursuant to guidelines for acupuncture care
2 established by paragraph (2). Within five working days of the
3 employee's request to see an acupuncturist, the health care
4 organization and any person or entity who directs the kind or
5 manner of health care services for the plan shall refer an injured
6 employee to an affiliated acupuncturist for work-related injuries
7 that are within the guidelines for acupuncture care established by
8 paragraph (2). Acupuncture care rendered in accordance with
9 guidelines for acupuncture care established pursuant to paragraph
10 (2) shall be provided by duly licensed acupuncturists affiliated
11 with the plan.

12 (2) The health care organization shall establish guidelines for
13 acupuncture care in consultation with affiliated acupuncturists who
14 are participants in the health care organization's utilization review
15 process for acupuncture care, which may include qualified medical
16 evaluators. The guidelines for acupuncture care shall, at a
17 minimum, explicitly require the referral of any injured employee
18 who so requests to an affiliated acupuncturist for the evaluation
19 or treatment, or both, of neuromusculoskeletal conditions.

20 (3) Whenever a dispute concerning the appropriateness or
21 necessity of acupuncture care for work-related injuries arises, the
22 dispute shall be resolved by the health care organization's
23 utilization review process for acupuncture care in accordance with
24 the health care organization's guidelines for acupuncture care
25 established by paragraph (2).

26 Acupuncture utilization review for work-related injuries shall
27 be conducted in accordance with the health care organization's
28 approved quality assurance standards and utilization review process
29 for acupuncture care. Acupuncturists affiliated with the plan shall
30 have access to the health care organization's provider appeals
31 process and, in the case of acupuncture care for work-related
32 injuries, the review shall include review by an acupuncturist
33 affiliated with the health care organization, as determined by the
34 health care organization.

35 (4) The health care organization shall inform employees of the
36 procedures for processing and resolving grievances, including
37 those related to acupuncture care, including the location and
38 telephone number where grievances may be submitted.

(5) All guidelines for acupuncture care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

SEC. 71. Section 11604.5 of the Probate Code is amended to read:

11604.5. (a) This section applies when distribution from a decedent's estate is made to a transferee for value who acquires any interest of a beneficiary in exchange for cash or other consideration.

(b) For purposes of this section, a transferee for value is a person who satisfies both of the following criteria:

(1) He or she purchases the interest from a beneficiary for consideration pursuant to a written agreement.

(2) He or she, directly or indirectly, regularly engages in the purchase of beneficial interests in estates for consideration.

(c) This section does not apply to any of the following:

(1) A transferee who is a beneficiary of the estate or a person who has a claim to distribution from the estate under another instrument or by intestate succession.

(2) A transferee who is either the registered domestic partner of the beneficiary, or is related by blood, marriage, or adoption to the beneficiary or the decedent.

(3) A transaction made in conformity with the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code) and subject to regulation by the Department of Business Oversight.

(4) A transferee who is engaged in the business of locating missing or unknown heirs and who acquires an interest from a beneficiary solely in exchange for providing information or services associated with locating the heir or beneficiary.

(d) A written agreement is effective only if all of the following conditions are met:

(1) The executed written agreement is filed with the court not later than 30 days following the date of its execution or, if administration of the decedent's estate has not commenced, then within 30 days of issuance of the letters of administration or letters testamentary, but in no event later than 15 days prior to the hearing on the petition for final distribution. Prior to filing or serving that written agreement, the transferee for value shall redact any personally identifying information about the beneficiary, other

1 than the name and address of the beneficiary, and any financial
2 information provided by the beneficiary to the transferee for value
3 on the application for cash or other consideration, from the
4 agreement.

5 (2) If the negotiation or discussion between the beneficiary and
6 the transferee for value leading to the execution of the written
7 agreement by the beneficiary was conducted in a language other
8 than English, the beneficiary shall receive the written agreement
9 in English, together with a copy of the agreement translated into
10 the language in which it was negotiated or discussed. The written
11 agreement and the translated copy, if any, shall be provided to the
12 beneficiary.

13 (3) The documents signed by, or provided to, the beneficiary
14 are printed in at least 10-point type.

15 (4) The transferee for value executes a declaration or affidavit
16 attesting that the requirements of this section have been satisfied,
17 and the declaration or affidavit is filed with the court within 30
18 days of execution of the written agreement or, if administration of
19 the decedent's estate has not commenced, then within 30 days of
20 issuance of the letters of administration or letters testamentary,
21 but in no event later than 15 days prior to the hearing on the petition
22 for final distribution.

23 (5) Notice of the assignment is served on the personal
24 representative or the attorney of record for the personal
25 representative within 30 days of execution of the written agreement
26 or, if general or special letters of administration or letters
27 testamentary have not been issued, then within 30 days of issuance
28 of the letters of administration or letters testamentary, but in no
29 event later than 15 days prior to the hearing on the petition for
30 final distribution.

31 (e) The written agreement shall include the following terms, in
32 addition to any other terms:

33 (1) The amount of consideration paid to the beneficiary.

34 (2) A description of the transferred interest.

35 (3) If the written agreement so provides, the amount by which
36 the transferee for value would have its distribution reduced if the
37 beneficial interest assigned is distributed prior to a specified date.

38 (4) A statement of the total of all costs or fees charged to the
39 beneficiary resulting from the transfer for value, including, but not
40 limited to, transaction or processing fees, credit report costs, title

1 search costs, due diligence fees, filing fees, bank or electronic
2 transfer costs, or any other fees or costs. If all the costs and fees
3 are paid by the transferee for value and are included in the amount
4 of the transferred interest, then the statement of costs need not
5 itemize any costs or fees. This subdivision shall not apply to costs,
6 fees, or damages arising out of a material breach of the agreement
7 or fraud by or on the part of the beneficiary.

8 (f) A written agreement shall not contain any of the following
9 provisions and, if any such provision is included, that provision
10 shall be null and void:

11 (1) A provision holding harmless the transferee for value, other
12 than for liability arising out of fraud by the beneficiary.

13 (2) A provision granting to the transferee for value agency
14 powers to represent the beneficiary's interest in the decedent's
15 estate beyond the interest transferred.

16 (3) A provision requiring payment by the beneficiary to the
17 transferee for value for services not related to the written agreement
18 or services other than the transfer of interest under the written
19 agreement.

20 (4) A provision permitting the transferee for value to have
21 recourse against the beneficiary if the distribution from the estate
22 in satisfaction of the beneficial interest is less than the beneficial
23 interest assigned to the transferee for value, other than recourse
24 for any expense or damage arising out of the material breach of
25 the agreement or fraud by the beneficiary.

26 (g) The court on its own motion, or on the motion of the personal
27 representative or other interested person, may inquire into the
28 circumstances surrounding the execution of, and the consideration
29 for, the written agreement to determine that the requirements of
30 this section have been satisfied.

31 (h) The court may refuse to order distribution under the written
32 agreement, or may order distribution on any terms that the court
33 considers equitable, if the court finds that the transferee for value
34 did not substantially comply with the requirements of this section,
35 or if the court finds that any of the following conditions existed at
36 the time of transfer:

37 (1) The fees, charges, or consideration paid or agreed to be paid
38 by the beneficiary were grossly unreasonable.

39 (2) The transfer of the beneficial interest was obtained by duress,
40 fraud, or undue influence.

1 (i) In addition to any remedy specified in this section, for any
2 willful violation of the requirements of this section found to be
3 committed in bad faith, the court may require the transferee for
4 value to pay to the beneficiary up to twice the value paid for the
5 assignment.

6 (j) Notice of the hearing on any motion brought under this
7 section shall be served on the beneficiary and on the transferee for
8 value at least 15 days before the hearing in the manner provided
9 in Section 415.10 or 415.30 of the Code of Civil Procedure.

10 (k) If the decedent's estate is not subject to a pending court
11 proceeding under the Probate Code in California, but is the subject
12 of a probate proceeding in another state, the transferee for value
13 shall not be required to submit to the court a copy of the written
14 agreement as required under paragraph (1) of subdivision (d). If
15 the written agreement is entered into in California or if the
16 beneficiary is domiciled in California, that written agreement shall
17 otherwise conform to the provisions of subdivisions (d), (e), and
18 (f) in order to be effective.

19 SEC. 72. Section 408 of the Revenue and Taxation Code is
20 amended to read:

21 408. (a) Except as otherwise provided in subdivisions (b), (c),
22 (d), (e), and (g), any information and records in the assessor's
23 office that are not required by law to be kept or prepared by the
24 assessor, disabled veterans' exemption claims, and homeowners'
25 exemption claims, are not public documents and shall not be open
26 to public inspection. Property receiving the homeowners'
27 exemption shall be clearly identified on the assessment roll. The
28 assessor shall maintain records which shall be open to public
29 inspection to identify those claimants who have been granted the
30 homeowners' exemption.

31 (b) The assessor may provide any appraisal data in his or her
32 possession to the assessor of any county.

33 The assessor shall disclose information, furnish abstracts, or
34 permit access to all records in his or her office to law enforcement
35 agencies, the county grand jury, the board of supervisors or their
36 duly authorized agents, employees, or representatives when
37 conducting an investigation of the assessor's office pursuant to
38 Section 25303 of the Government Code, the county recorder when
39 conducting an investigation to determine whether a documentary
40 transfer tax is imposed, the Controller, employees of the Controller

1 for property tax postponement purposes, probate referees,
2 employees of the Franchise Tax Board for tax administration
3 purposes only, staff appraisers of the Department of Financial
4 Institutions, the Department of Transportation, the Department of
5 General Services, the State Board of Equalization, the State Lands
6 Commission, the State Department of Social Services, the
7 Department of Child Support Services, the Department of Water
8 Resources, and other duly authorized legislative or administrative
9 bodies of the state pursuant to their authorization to examine the
10 records. Whenever the assessor discloses information, furnishes
11 abstracts, or permits access to records in his or her office to staff
12 appraisers of the Department of Business Oversight, the
13 Department of Transportation, the Department of General Services,
14 the State Lands Commission, or the Department of Water
15 Resources pursuant to this section, the department shall reimburse
16 the assessor for any costs incurred as a result thereof.

17 (c) Upon the request of the tax collector, the assessor shall
18 disclose and provide to the tax collector information used in the
19 preparation of that portion of the unsecured roll for which the taxes
20 thereon are delinquent. The tax collector shall certify to the assessor
21 that he or she needs the information requested for the enforcement
22 of the tax lien in collecting those delinquent taxes. Information
23 requested by the tax collector may include social security numbers,
24 and the assessor shall recover from the tax collector his or her
25 actual and reasonable costs for providing the information. The tax
26 collector shall add the costs described in the preceding sentence
27 to the assessee's delinquent tax lien and collect those costs subject
28 to subdivision (e) of Section 2922.

29 (d) The assessor shall, upon the request of an assessee or his or
30 her designated representative, permit the assessee or representative
31 to inspect or copy any market data in the assessor's possession.
32 For purposes of this subdivision, "market data" means any
33 information in the assessor's possession, whether or not required
34 to be prepared or kept by him or her, relating to the sale of any
35 property comparable to the property of the assessee, if the assessor
36 bases his or her assessment of the assessee's property, in whole
37 or in part, on that comparable sale or sales. The assessor shall
38 provide the names of the seller and buyer of each property on
39 which the comparison is based, the location of that property, the
40 date of the sale, and the consideration paid for the property, whether

1 paid in money or otherwise. However, for purposes of providing
2 market data, the assessor may not display any document relating
3 to the business affairs or property of another.

4 (e) (1) With respect to information, documents, and records,
5 other than market data as defined in subdivision (d), the assessor
6 shall, upon request of an assessee of property, or his or her
7 designated representative, permit the assessee or representative to
8 inspect or copy all information, documents, and records, including
9 auditors' narrations and workpapers, whether or not required to
10 be kept or prepared by the assessor, relating to the appraisal and
11 the assessment of the assessee's property, and any penalties and
12 interest thereon.

13 (2) After enrolling an assessment, the assessor shall respond to
14 a written request for information supporting the assessment,
15 including, but not limited to, any appraisal and other data requested
16 by the assessee.

17 (3) Except as provided in Section 408.1, an assessee, or his or
18 her designated representative, may not be permitted to inspect or
19 copy information and records that also relate to the property or
20 business affairs of another, unless that disclosure is ordered by a
21 competent court in a proceeding initiated by a taxpayer seeking to
22 challenge the legality of the assessment of his or her property.

23 (f) (1) Permission for the inspection or copying requested
24 pursuant to subdivision (d) or (e) shall be granted as soon as
25 reasonably possible to the assessee or his or her designated
26 representative.

27 (2) If the assessee, or his or her designated representative,
28 requests the assessor to make copies of any of the requested
29 records, the assessee shall reimburse the assessor for the reasonable
30 costs incurred in reproducing and providing the copies.

31 (3) If the assessor fails to permit the inspection or copying of
32 materials or information as requested pursuant to subdivision (d)
33 or (e) and the assessor introduces any requested materials or
34 information at any assessment appeals board hearing, the assessee
35 or his or her representative may request and shall be granted a
36 continuance for a reasonable period of time. The continuance shall
37 extend the two-year period specified in subdivision (c) of Section
38 1604 for a period of time equal to the period of continuance.

39 (g) Upon the written request of the tax collector, the assessor
40 shall provide to the tax collector information for the preparation

1 and enforcement of Part 6 (commencing with Section 3351). The
2 tax collector shall certify to the assessor that he or she needs the
3 contact information to assist with the preparation and enforcement
4 of Part 6 (commencing with Section 3351). The assessor shall
5 provide the information, which may not include social security
6 numbers. Any information provided to the tax collector pursuant
7 to this subdivision shall not become a public record and shall not
8 be open to public inspection. The tax collector shall reimburse the
9 assessor for the actual and reasonable costs incurred by the assessor
10 for providing the information to administer this subdivision. The
11 tax collector shall add the costs described in the preceding sentence
12 to the assessee's delinquent taxes and include the costs incurred
13 subject to Sections 4112 and 4672.2. The tax collector or his or
14 her designated employee shall, under penalty of perjury, certify
15 to the assessor that he or she needs the information to assist with
16 the preparation and enforcement of Part 6 (commencing with
17 Section 3351), and that the information provided pursuant to this
18 subdivision that is not public record and that is not open to public
19 inspection shall not become public record and shall not be open
20 to public inspection.

21 SEC. 73. Section 22005.1 of the Welfare and Institutions Code
22 is amended to read:

23 22005.1. (a) The State Department of Health Care Services
24 shall only certify a long-term care insurance policy that
25 substantially meets the requirements of Chapter 2.6 (commencing
26 with Section 10230) of Part 2 of Division 2 of the Insurance Code,
27 except the requirements of Sections 10232.1, 10232.2, 10232.8,
28 10232.9, and 10232.92 of the Insurance Code, and that provides
29 all of the items specified in subdivision (b). The State Department
30 of Health Care Services shall only certify a health care service
31 plan contract that has been approved by the Department of ~~Business~~
32 ~~Overight~~ *Managed Health Care* pursuant to Chapter 2.2
33 (commencing with Section 1340) of Division 2 of the Health and
34 Safety Code as providing substantially equivalent coverage to that
35 required by Chapter 2.6 (commencing with Section 10230) of Part
36 2 of Division 2 of the Insurance Code, and that provides all of the
37 items specified in subdivision (b). Policies issued by organizations
38 subject to the Insurance Code and regulated by the Department of
39 Insurance shall also be approved by the Department of Insurance.

1 (b) Only policies and contracts that provide all of the following
2 items shall be certified by the department:

3 (1) Individual assessment and case management by a
4 coordinating entity designated and approved by the department.

5 (2) Levels and durations of benefits that meet minimum
6 standards set by the State Department of Health *Care* Services
7 pursuant to Section 22009.

8 (3) Protection against loss of benefits due to inflation.

9 (4) A periodic record issued to the insured including an
10 explanation of insurance payments or benefits paid that count
11 toward Medi-Cal asset protection under this division.

12 (5) Compliance with any other requirements imposed by
13 regulations adopted by the State Department of Health *Care*
14 Services or the State Department of Social Services and consistent
15 with the purposes of this division.